3153

RENT LAW PROCEDURE

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BY

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PREFACE.

SINCE the MSS. of the following pages were entrusted to the Publishers' hands, a Work has appeared under the authority of the Board of Revenue, which considerably diminishes the pre-existing want of a compilation shewing the effect of the Decisions of the late Sudder and the present High Court on the Rent Laws enacted for Bengal. That such a Work was in preparation, I was not aware till I had finished my own task. Although the design of the two books is nearly the same, there is sufficient difference in the plan of each to leave room for both in the large space, which so important a subject ought to occupy. My object in first attempting such a Work was to put together, in a tangible shape, for those beginning the subject, the results of what has been done during the last four years, which, being the first years of the Act, have possibly tested and fixed its procedure more than any similar subsequent period will do. If I have undertaken to do what could have been much better done by older hands, my apology must be, that from having opportunely entered the Service almost simultaneously with the passing of the new Law, I have been associated with the progress which I have endeavoured to explain to those who follow.

The publication of the Work has been unavoidably delayed by circumstances. In consequence of the delay, however, I have been enabled to bring the Cases down to a much later date than I at first anticipated, and looking at the importance of a few Decisions passed recently, the delay is scarcely to be regretted. I have, in almost every case, myself referred to the Decision from which I have quoted. In a few instances I have changed what, from the marginal note in common use, seemed to me to be erroneously taken to be the *gist* of the Decision. I have given the No. of the Cases quoted, except in one or two instances. The plan of the Work will, I hope, facilitate reference and enable any point required to be found without delay. By turning to the Contents at the beginning, any one possessing a slight knowledge of the subject will be enabled to find the Chapter containing what he wants; and the marginal notes will direct his search in the Chapter. He will thus find the point, where the context will prevent him from mistaking its relative meaning, an error too frequent when a beginner trusts merely to an abstract of a subject which he has not yet mastered. To those more conversant with the subject matter of the compilation, it is hoped that the Index at the end will furnish an easy means of finding any particular Decision which may be required for hasty reference or quotation. It was part of my original design to have the Work translated into Bengalee, for the use of Deputy Collectors and Vakeels, who are not

conversant with English. Whether or not I shall carry out my plan in this respect, will depend upon the judgment of those more competent than myself to decide on the merits of the Publication, and the criticism of the Public, to whom I submit the following pages.

MYMENSING,
December, 1864.

C. D. FIELD.

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RENT LAW PROCEDURE.

CHAPTER I.

What suits may be brought in the Revenue Courts.

THE following suits connected with the rights of landlord and tenant may be brought forward and dealt with in the Courts of Collectors and Deputy Collectors in Bengal. By the word "suits" I mean not only suits in the stricter acceptation of the word, but all applications connected with land, which the above officers are authorized to receive and adjudicate upon.

I. Suits for the delivery of pottahs and Kabooliyats (leases and counter-leases), or for the determination of the rates of rent at which such pottahs or Kabooliyats are to be delivered, under Clause 1, Section 23, Act X. of 1859.

II. Suits for damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent, or on account of the extortion of rent by confinement or other duress, under Clause 2, Section 23, Act X. of 1859.

III. Complaints of excessive demand of rent, and all claims to abatement of rent, under Clause 3, Section 23, Act X. of 1859.

IV. Suits for arrears of rent due on account of land either kherajee or lakhiraj (liable for Government revenue or not), or on account of any rights of pasturage, forest-

rights, fisheries, or the like, under Clause 4, Section 23, Act X. of 1859.

V. Suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled, under clause 5, Section 23, Act X. of 1859.

VI. Suits to recover the occupancy or possession of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, under Clause 6, Section 23, Act X. of 1859.

VII. Suits arising out of the exercise of the power of distraint conferred on zemindars and others by Sections 112 and 114 of Act X. of 1859, or out of any acts done under color of the exercise of the said power, under Clause 7, Sections 23, Act X. of 1859.

VIII. Suits against agents or their sureties for money, papers, or accounts, under Section 24 of Act X. of 1859.

IX. Applications to eject any cultivator *not having a right of occupancy*, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy; or any agent after the determination of his agency; or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, under Section 25 of Act X. of 1859.

X. Suits respecting measurement, under Section 9, Act VI. (Bengal Council) of 1862.

XI. Suits respecting registry of transfer of talooks or tenures in the zemindarce sherishteh, under Section 27, Act X. of 1859.

XII. Applications to dispossess grantees of rent-free lands, under Section 28, Act X. of 1859.

XIII. Application for service of notices of enhancement, under Section 13, Act X. of 1859.

XIV. Application for service of notices of relinquishment of land, under Section 19, Act X. of 1859.

XV. Deposit of rents tendered to and refused by landlords, under Section 5, Act VI. (Bengal Council) of 1862.

XVI. Applications for measurement, under Section 10 Act VI of 1859. (Bengal Council) of 1862.

XVII. Cases of resistance of process, under Section 147, Act X of 1859.

XVIII. Sales of putnee talooks, under Regulation VIII. of 1819.

With the exception of the last class of cases, all the above suits and applications are made under Acts X. of 1859 and VI. (B.C.) of 1862. Some of these applications, such as those for enhancement-notices and relinquishment of land necessitate no adjudication, and to these the term "suits" will scarcely apply even in the wide acceptation I have given to the word above. I have, however, retained the above classification, as it is that adopted in the periodical returns made through the Commissioners to the Board. I shall now proceed to treat of these classes of cases, consecutively and as nearly as possible in the above order, premising, however, that this little work has no pretensions whatever to be regarded as a Law Treatise. It is only an attempt to put into shape and form, for easy reference, the procedure in cases connected with rent, as fixed by the law, or settled by such precedents as the High Court, or the former Sudder Dewanny Adawlut have laid down or admitted in practice as authorities on the subject. If, therefore, my nomenclature fall far short of the Westminster standard, I trust I shall not shock those who are quick to perceive the failing, as this little work is intended more especially for

those whose career will never lead them where the Majesty of the Law demands from those who approach her High Court —a suitable address and Court language. To such my plain vocabulary will, I hope, be more acceptable as well as more *intelligible.*

CHAPTER II.

Of Suits for the delivery of Pottahs and Kabooliyats, or for the determination of the rates of rent, at which such Pottahs or Kabooliyats are to be delivered under Clause 1, *Section* 23.

General Rule.

Every ryot is entitled to receive a pottah from the person to whom the rent of the land held or cultivated by him is payable (Section 2), and every person, who grants a pottah, is entitled to receive from the person to whom the pottah is granted, a kabooliyat or counterpart engagement in conformity with the terms of the pottah (Section 9).

Pottah what to contain.

A pottah should contain the following particulars (Section 2) :—

1. The quantity of land; and where fields have been numbered in a Government survey, the number of each field.
2. The amount of annual rent.
3. The instalments in which the same is to be paid.
4. Any special conditions of the lease.
5. If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

There are *three classes* of pottahs noticed by the law—1*st*, pottahs at fixed rates; 2*nd*, pottahs at fair and equitable rates; 3*rd*, pottahs at rates to be fixed between the parties by mutual agreement.

Classes of Pottahs.

Ryots who, in the provinces of Bengal, Behar, Orissa, and Benares, hold land at fixed rates of rent, *which have not been changed from the time of the permanent settlement*, are entitled to receive pottahs at those rates (Section 3). If it be proved, however, that the rent at which land is held by a ryot in these provinces, has not been changed for a period of twenty years before the commencement of the suit, there will be a legal presumption, or, what is technically termed, a presumption of law, that the land has been held at that rate from the time of the permanent settlement. This presumption may however be rebutted by proving that the rate of rent has not continued uniform since the time of the permanent settlement, or that such rent was fixed at some later period, (Section 4). The only issue under Section 3 is, whether the rent has been changed since the time of the permanent settlement or not. The nature of the original pottah granted before the permanent settlement, is immaterial, and the right is not affected by subsequent transfers, nor by Section 37, Act XI. of 1859; (*Ram Nath Loll Bhokut, Appellant, 27th July*, 1863). A ryot is entitled to the benefit of the presumption of law in Section 4, if he *plead* that his rent has not been changed since the time of the permanent settlement, and *prove* that it has been uniform for the preceding 20 years, (*No.* 446 *of* 1863, *Chunder Koomar Roy and others, Appellants, 17th August*, 1863); but he is not entitled to this benefit, if he do not plead as above, (*No.* 411 *of* 1863, *Reazan Nissa, Appellant, 30th November*, 1863). A defendant pleaded that he had

First Class.

held at the same rent for more than 20 years, in fact for 57 years, on a pottah of a date however subsequent to that of the permanent settlement. This defence was held to annul the presumption of law, (*No.* 92 *of* 1862—*Rajah Munmohun Singh, Appellant,* 12*th August,* 1862). In *No.* 883 *of* 1862, *Lallah Pecumlal Dass, Appellant,* 2*nd April,* 1863, a pottah was filed of a date subsequent to that of the permanent settlement. There being nothing in that pottah to show that the land had been previously held by persons through whom the holder of the pottah claimed, it was held to annul the presumption; and again, where defendants, ryots, pleaded that they had held for 50 or 60 years, and for three generations, such uncertain allegations were held not equivalent to a plea of holding from the time of the permanent settlement. *No.* 3123 *of* 1863, *Ramnarain Singh and Gungaparain Singh, Appellants,* 24*th June,* 1864. There must have been a holding by a ryot or by some person through whom he claims for the 20 years next before the commencement of the suit, and any interruption of this possession will annul the presumption. (*No.* 425 *of* 1860, *Luteefoonissa Beebee, Appellant,* 22*nd August,* 1862.) A fixed rent for 18 years being proved by documentary evidence, and parol evidence shewing a fixed rent for more than 20 years, the High Court declined to interfere with the decision. (*No.* 1090 *of* 1862, *Runjeet Singh and others, Appellants,* 3*rd December* 1863.) The benefits conferred by Sections 3 and 4 can be claimed by ryots, *i.e.*, actual cultivators *only*. Middlemen or persons possessing an interest in the lands intermediate between the proprietor of the estate and the ryots cannot claim these benefits. (*Maharajah Narendra Narain Bhup, Appellant, July,* 1863.)

Second Class.

Ryots, having rights of occupancy, although not holding at fixed rates and therefore not entitled to the benefits of Sections 3 and

4, are yet entitled to receive pottahs at *fair and equitable rates.* (Section 5.) By right-of-occupancy ryots are meant ryots who have for 12 years cultivated or held land whether under pottah or not. (Sections 6.) A holding for 12 years gives, under the law, a right of occupancy to a ryot. What was involved in this right was for a long time a *vexata questio.* Some thought that it comprised an interest in the land entitling the tenant to a share of what, under the denomination of rent, belongs in most countries to the owner of the land. But this point has been finally settled in the great enhancement case, *Mr. J. Hills, Appellant, Issur Ghose, Respondent,* decided by the High Court on the 2nd September, 1863. In this case the High Court laid down as follows—"A ryot, with a right of occupancy only, has no such interest in the land as to entitle him to a share of the rent. He has merely a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent. He may or may not, according to circumstances, be entitled on account of increased expenditure to a share of any increase of proceeds, but he is not entitled to a share of the net proceeds or rent of the land." A right of occupancy then means now nothing more than that the tenant having such right cannot be evicted at the will of his landlord,—cannot be evicted as long as he pays the rent he has been in the habit of paying or which has been fixed in an enhancement suit. He is therefore liable to ejectment only under Section 78, and cannot be evicted under Section 25 of Act X. And the procedure will fall under that of the fifth class of suits laid down in our first chapter. The twelve years' holding necessary to create the above right, may be that of the father or other person from whom a ryot inherits, (Section 6.) The occupation must be *bonâ fide* occupation.

Right of Occupancy.

Occupation without right as a trespasser will not so entitle. (*No.* 127 *of* 1862, *Sheikh Peer Bux, Appellant, 8th March,* 1864.) The right of occupancy is the right of the cultivator of the soil only, and cannot be acquired by middlemen intermediate between the cultivator and the land-owner. (*No.* 577 *of* 1862, *Bhyrub Nauth Sandyal, Appellant, 24th December,* 1863.) (*No.* 448 *of* 1862, *Bindabund Chunder Chowdry, Appellant, 4th January,* 1864.) In the latter case defendants, middlemen, had held for 40 years.

Right-of-occupancy ryots are entitled to pottahs at fair and equitable rates. In case of dispute, says the law, (Section 5) the rate previously paid by a ryot shall be deemed to be fair and equitable, unless the *contrary* be shown in a suit by either party under the provisions of this Act. This leads to the questions of Abatement and Enhancement, which will be found in their proper places. The *contrary* may also be shown in a suit for a Kabooliyat, as will appear below. The term "fair and equitable rates" has been objected to as very undefined, and many modes of procedure have been followed in settling such rates. But it is obvious that the Legislature could never have enacted any thing more definite. Circumstances, varying in the different districts to which the law is applicable, render it impossible that any one rule should be framed capable of being followed out without deviation in all places. *Fair and equitable rates* must be accepted as a relative expression, meaning rates fair and equitable with respect to the circumstances of each case, and each case must be decided on its own merits, on its own equity.

Saving Clause in Pottah.

A landlord may not wish a ryot to acquire a right of occupancy, and may at the same time not wish to turn him out of his

holding, when the 12 years have nearly expired. Under Section 7 of the law, a saving clause can be inserted in the lease to bar the acquisition of the right.

Third Class.

Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable. (Section 8). In this case the law will not interfere between the contracting parties, who are left to make their own bargain. If the ryot cannot agree with the owner of the land as to the rate of rent, he cannot compel the delivery of a pottah at all. (*No.* 2207 *of* 1861, *Lalla Sheel Lol and others, Appellants,* 3*rd March,* 1863.)

Rulings.

In order to succeed in a suit for a Kabooliyat, it must be shown that a contract existed by which the relation of landlord and tenant was created between the parties. (*No.* 186 *of* 1862, *Gopee Mohun Ghose, Appellant,* 3*rd December,* 1863). *But see Index, heading Arrears.* A similar relation should of course be shown in a suit for a pottah. The ryot must shew that he holds the lands, *i. e.*, that the lands form a holding, to which he as ryot has some title. *No.* 2438 *of* 1863. *Nodhee Dass and others, Appellants,* 31*st May* 1864. In *No.* 97 *of* 1862, *Kishen Dhun Audhikaree, Appellant,* 12*th August,* 1862, it was laid down that a ryot is not entitled to demand a pottah for land, an accretion to his jote, from a party to whom he does not pay rent for the same. The relation of landlord and tenant did not exist between the parties. The fact of there being an arrear of rent due is no answer to a suit for a pottah (*No.* 1947 *of* 1861. *Sreeram Roy and others, Appellants,* 22*nd January,* 1863). If a ryot as plaintiff sue to obtain a pottah at fixed rates and fail to prove his case, he is not

entitled to a decree for a pottah at fair and equitable rates. (*Nos* 510 *and* 511 *of* 1862, *Doorga Mahtoon, Appellant,* 20*th March,* 1863.)

Kabooliyats.

The tender to any ryot of a pottah, such as the ryot is entitled to receive, shall be held to entitle the person, to whom the rent is payable, to receive a kabooliyat from such ryot, (Section 9). The institution of a suit for a kabooliyat is however in itself evidence of the tender of a pottah and demand for a kabooliyat, sufficient to justify the action. (**Joy Kishen Mookerjee, Appellant,* 31*st March,* 1862). By this same ruling it is competent to a zemindar, after issue of notice to a ryot, of enchancement of rent under Section 13 of Act X, to institute a suit to determine the rates of enhanced rent, and to enforce the delivery of a kabooliyat at the rates determined. And such a suit may be instituted and a decree for a kabooliyat obtained without issue of any notice. But if the new rate be in excess of the former rate, the enhanced rent will be payable only from the commencement of the year following the decree, (*Gour Sunder Chowdhry, Appellant,* 29*th May,* 1862). (*Ishur Chunder Roy, Appellant,* 26*th June,* 1862). And again in *Nos.* 2960 *and* 2961 *of* 1862, *Jan Ally, Appellant,* 5*th January* 1864, it is laid down in so many words that notice is not required in a suit for a kabooliyat at enhanced rates. But such a kabooliyat, as ruled above, only taking effect from the commencement of the year following the decree, the ryot has as much or more

* The case *No* 2137 *of* 1862, *Doorga Kanth Muzumdar, Appellant,* 5*th April,* 1864, seems however against the above ruling of the old Sudder. It was there stated that the tender of a pottah was necessary, but the objection that a pottah had not been tendered, could not be made for the first time orally on special appeal. I opine that, where a ryot could not be found to make the tender, the ruling in the text would hold, but that it would be incumbent on a plaintiff to show that he had made some attempt to find the ryot and make a tender.

notice to prepare for payment of a higher rent, than if he was served with notice of enhancement in or before the month of Cheyt, as required by Section 13, and then sued on this notice for enhanced rent of the year commencing on the expiry of the month of Cheyt, The only difference would be to the landlord, who, holding a kabooliyat, could sue at any time, within the usual three years, for rent at the enhanced rate, falling due after the first day of the year succeeding the obtainment of the kabooliyat; whereas a landlord, who had only served notice under Section 13, must sue on the notice for the enhanced rent before the expiry of *three months* from the end of the year for which such enhanced rent is claimed. (See end of Section 32.) The mode of proceeding by suit for kabooliyat is, I think, the simplest and least beset with doubts and chances for a zemindar wishing to raise his rents. So far from a notice being necessary in these suits, it has been ruled, in the case of *Messrs. Cohn, Feilman and Co., Appellants, 14th June,* 1862, that in an action for a kabooliyat at an enhanced rate, it is not necessary that attention should be called to this fact in the plaint. This is a ruling of the old Sudder Dewanny Adawlut, and I am not aware that the point has ever been raised before the present High Court. I think that this ruling must be received with caution. It probably means that it is not necessary to state in the plaint, in so many words, that the rate at which a kabooliyat is sued for, is an enhanced rate; though, of course, the plaint would contain some mention of the rate claimed, by which the party sued could judge whether it were the former rate or an enhanced rate. Otherwise the defendant could scarcely know what defence he would have to make; and it is a rule in law, that a case must be dealt with as first laid, and a plaintiff will not be

allowed to shift his case or set up a new case at a subsequent stage of the proceedings, because damage would very possibly be done to a defendant, who had come prepared to answer one set of allegations, if he found he had to meet another set of which he had had no previous notice. Hence arises the importance of observing strictly the rules about filing documents with the plaint, or making mention of them in the plaint as about to be filed afterwards with the reason of their not being filed at first, that a defendant may have some previous knowledge of the case he has to meet. For these reasons I think that the plaint in a suit for a kabooliyat should contain some mention of the rate at which such kabooliyat was sought, though, as ruled above, it might not be necessary to declare specifically that this was an enhanced rate.

A tenant cannot be compelled to execute a kabooliyat for land held under an istemraree pottah, as this might destroy his title. (*No.* 2137 *of* 1862, *Doorgakanth Muzimdar, Appellant, 5th April,* 1864). By this same ruling, if a tenant encroach on land, and then cannot show which land belongs to his rightful holding and which is the encroachment, he will be liable to be assessed for the latter as for the best land on the same principle as the jeweller, who took the diamond found by the boy and refused to return it, had to pay for a diamond of the best water. A zemindar cannot sue for a kabooliyat from a mere trespasser and not a tenant, *i. e.*, the relation of landlord and tenant must exist between the parties. (*No.* 2216 *of* 1862, *Ramkanto Chowdry, Appellant, 7th April,* 1864.)

Lakhiraj land.

There is one case in which the rule, that, in order to succeed in a suit for a Kabooliyat, the relation of landlord and tenant must be shown to have previously existed, seems to be violated.

It is when a zemindar has established his right to resume lakhiraj land. In the case of *Joyhishen Mookerjee, Appellant, 13th July,* 1861, it has been ruled that a zemindar under these circumstances can, after issue of notice to the tenant of the rates of rent demanded for the land, institute a suit under Clause 1, Section 23, to obtain the confirmation of those rates, and procure a kabooliyat in accordance therewith, but no arrears of rent can be decreed to him in such a suit. Here, indeed, the relations of landlord and tenant had not before existed, but the decision goes on the principle that a dispossessed lakhirajdar is entitled to the refusal of the resumed land, which he had before held rent-free, and upon which he had, perhaps, built or made improvements, and which, after long possession, he would be perhaps very unwilling to leave. Of course it is at his own option to stay on as a tenant or not, and if he wished to leave, he could not be forced to give a kabooliyat and stay. Whether such a notice should be served under the provisions of Section 13 or not, and when a decree for a kabooliyat in such a case should take effect, are points never decided in appeal, I believe, as yet. I opine that such a notice might be served at any time, and that a decree should take effect from the commencement of the year following the resumption.

Intervener.

In a suit for a kabooliyat an intervener can appear and be heard under Section 77, (*No.* 174 *of* 1863, *Sheik Manik Mundle, Appellant, 4th August,* 1863).

Term of the lease.

If on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy, the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as, under the circumstances

of the case, he may think just and proper. Provided that the term shall not, in any case, be longer than ten years, and in estates not permanently settled, shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators *not* having a right of occupancy, the term of the pottah shall be exclusively in the discretion of the person entitled to the rent of the land, (Section 76). This refers only to a pottah. In a suit for a kabooliyat at enhanced rates, it has been ruled, in the case of *Mr. James Hills, Appellant, 2nd September,* 1863, that the rent cannot be fixed for a period of years, as it can be in a suit by a ryot, with rights of occupancy, for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the ryot. It does not also give the landlord a right to compel him to continue his occupation. By a parity of reasoning, the same rule would hold in a suit for a kabooliyat at the old rates against a ryot having rights of occupancy. Of course, where the ryot had received a pottah for a term, if a kabooliyat were sued for in accordance with the conditions of the pottah, the same term could be inserted in the kabooliyat.

Sometimes the proviso is inserted in a kabooliyat, that the tenant is to pay at pergunnah rates for any land which, in future measurements, might be found to be in excess of the recorded area. In *No.* 1055 *of* 1863, *Mr. J. A. Courjon, Appellant,* 10*th February,* 1864, it was held by the High Court that such a proviso is only a measure of precaution to prevent tenants from encroaching on the khas

lands of the zemindar, and that it does not vary the strict terms of the lease, binding the tenant to pay rent for the area found by a prior measurement. This is an equitable interpretation of the strict letter of the contract not unlike the equitable interpretation of the terms of a contract between theatrical parties under English Law, as administered in the Courts of Equity at home, whereby, although the parties have expressly contracted that, in the event of either party breaking the agreement, he should pay to the other £1,000, yet since the case of *Kemble* vs. *Farren*, 6 Bing 181, the performance of the literal terms of such a contract will not be decreed.

Decree how to be enforced.

When a decree is given for the delivery of a pottah, if the person required by the decree to grant the pottah refuse or delay to do so, the Collector or other officer deciding the case may grant a pottah in conformity with the terms of the decree, under his hand and seal, and this will have the same force and effect as a pottah granted by the person directed to grant the pottah and refusing or delaying to do so, (Section 80). The same rule, *mutatis mutandis*, applies to a kabooliyat and the decree is evidence of the amount of rent claimable from the tenant, (Section 8)q.

Limitation.

Suits for the delivery of pottahs and kabooliyats and for the determination of the rates of rent, at which they are to be delivered, may be instituted at any time during tenancy, (Section 31). There is therefore practically no limitation to the period of sueing, so long as the relation of landlord and tenant continues.

Appeals.

The regular appeal in the class of cases treated under this Chapter lies to the Judge under Section 160. As they are not included

in the classes for which provision is made in Section 153, whether a Collector or a Deputy Collector have decided the case, the regular appeal lies to the Judge. For a more explicit exposition of the principle of appeals, I beg to refer the reader to the Chapter on Appeals.

CHAPTER III.

Of suits for damages on account of the illegal exaction of rent, or of any unauthorized cess or import, or on account of the refusal of receipts for rent; or on account of the extortion of rent by confinement or other duress, (under Clause 2, Section 23.)

Power of landlords to enforce attendance of ryots.

Before Act X. of 1859 was passed, landlords had, by law, the power of enforcing the attendance of their ryots for the purpose of settling their rent accounts. This power of taking the law into their own hands was, as might be expected, used or rather abused for purposes other than that for which it was allowed, and enforcing the attendance of a ryot to settle his accounts too often became synonymous with keeping him in confinement till he paid all that was due or said to be due from him, or found competent security among his more substantial fellow-ryots for such payment. That this power was tolerated so long is matter of wonder, rather than that it was last withdrawn. Section 11 of the Act enacts that the power heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or

for any other purpose, is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them other than are authorized by the provisions of the Act, and the following Section (12) goes on to enact that if the payment of rent, *whether legally due or not*, be extorted from any under-tenant or ryot by illegal confinement or other duress, such under-tenant or ryot shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion; and the end of the Section adds further, that this award of compensation shall not be a bar to a criminal action, that is, this award will only be one of civil damages. This is the third and last ground of an action for damages under the heading to this Chapter. I have treated this point first because it was in consequence of the abuse of the above power that it became necessary to provide for the remedies given in this class of suits. I may add that the abrogation of this power created great discussion at the time, and many feared that, in consequence of its abrogation, landlords would never be able to collect their rents. Experience has however shown these fears to have been groundless.

The grounds of action, as contained in the heading, are three:—

I. Illegal exaction of rent or of any unauthorized cess or impost.

II. Refusal of receipts for rent.

III. Extortion of rent by confinement or other duress.

The first question is, what is "an illegal exaction of rent" as distinguished from extortion of rent in the third clause? It is, as defined in Section 10, the exaction of

Illegal exaction of rent or of any unauthorized cess or impost.

any sum in excess of the rent specified in the pottah or payable under the provisions of Act X. The word *exaction* is nearly synonymous with *extortion*, and implies the use of pressure or constraint of some kind. The rent exacted must be rent in excess of what is justly due. In this respect, as in the mode of exaction or extortion, there is a difference between the grounds of action under the first and third clauses. With reference to the exaction of cesses or imposts, it is sufficient to remark that, under various names and various pretexts, it has been the custom of landlords in India to make their tenants pay small sums over and above the amount put down as rent. These sums went sometimes as perquisites to those employed in the collection of the rents, but too often formed no inconsiderable increase to the rents themselves, and found their way into the pocket of the landlord. From the commencement of our rule, various Regulations were directed against the practice, and landlords were ordered, at an early date, to amalgamate these cesses, or at least those of them sanctioned by custom, in one gross sum with the rent, and to grant a pottah for the same. This law, like most enactments directed against what has been long sanctioned by custom, proved abortive. The ryots themselves are as willing, in most cases, to pay these little fees, as those who collect the rents are to take them. They have been so long used to pay them, that they do not think they will stand well with their landlord unless they do so. It is only when grasping *amlah* or needy landlords use the custom as a means of extortion, in the popular sense of the word, that the ryots became fractious and refused to accede. Very often before becoming so, they have submitted to a considerable amount of exaction, which has at length been carried to that point at which forbearance must cease. The amount of damages

which may be recovered by a plaintiff successful in his suit under the clause we are discussing, is not to exceed double the amount exacted or paid. (Section 10).

Refusal of receipts for rent.

To constitute "a refusal of a receipt," it will be sufficient, 1*st*, if no receipt be given; 2*nd*, if a receipt be offered, but the giver refuse to specify therein the year or years on account of which he acknowledges the payment to be made. (Section 10). *See Payment in the Index.* Thus far the law goes, but no doubt if a tenant had more than one holding and made a payment of rent on account of any one of these holdings, the refusal to specify for what holding the payment was made, would be held to be a refusal of a receipt. Where there was a dispute as to the nature of the tenure, it was held that the tenant was not justified in asking that the tenure should be mentioned in the receipt as a tenure of that nature which he asserted it to be, because this might be used against the landlord as an admission afterwards. The amount of damages recoverable is limited to double the amount of the rent paid, for which a receipt was refused.

Extortion of rent by confinement or other duress.

It makes no matter whether the rent extorted by confinement or duress be rent legally due or not. It is the fact of its being levied by means now made illegal that forms the ground of action. In fact this is the sanction to Section 11, by which any landlord transgressing its provisions can be made to pay personal damages to the injured tenant to the amount of Rs. 200, and is also declared liable to a criminal prosecution. We have seen above that the exaction of rent in excess of the amount justly claimable from the ryot forms a ground of action. The exaction might be made in many ways, none of which

would bring the landlord within the grasp of the criminal law, hence a remedy in the nature of a civil action for small damages has been provided. But we are now dealing with an exaction or extortion by means which would bring the offender within the limits of criminal justice. Under the present law, (Section 44, Act XXV. of 1861,) a criminal prosecutor could be awarded by a Magistrate sufficient damages in a criminal case, so that a ryot could prosecute his landlord and receive amends either in the Court of the Collector or the Magistrate. If he sued before the Magistrate first and was awarded the fine or a portion of it, this would be a bar to his recovering damages in a suit under Act X., unless he could show very clearly that the amount awarded by the Magistrate was not adequate as a reasonable compensation for the injury done him by the extortion. A few words are necessary about the mode of extortion. The words of the law are "by illegal confinement or other duress." What is meant by illegal confinement cannot be doubted, but what the Legislators meant to designate by "other duress" is not so plain. Duress is laid down by Blackstone to be of two kinds—1*st*, duress of imprisonment, where a man actually loses his liberty; and 2nd, duress *per minas* or by threats where the hardship is only threatened and impending. Duress *per minas* is either for fear of loss of limb or loss of life, and this fear must be on sufficient reason. A fear of battery or being beaten, though never so well grounded, is no duress; neither is the fear of having one's house burned or one's goods taken away and destroyed, because, in these cases, should the threat be performed, a man may have satisfaction by recovering equivalent damages; but no suitable atonement can be made for the loss of life or limb. I quote from the Student's Blackstone, page 83.

I scarcely think that the word duress in the Section in question has been used in this restricted legal sense. Its popular meaning is perhaps the proper sense in which to interpret it. However no authoritative decision, that I am aware of, has settled the point, and therefore with the above explanation I leave it as I find it.

In assessing the amount of damages to be decreed, double the amount of rent paid in the first two instances and 200 rupees in the third instance is not to be given as a matter of course. Regard must be had to the hardships of each particular case, and fair and reasonable damages must be assessed accordingly. The above is the limit which is in no case to be exceeded. (*No.* 1642 *of* 1862, *Rashmonee Debea, Appellant,* 22*nd April,* 1863).

Limitation.

Suits under this Chapter must be brought within one year from the date of the accruing of the cause of action. They fall under the general rule of limitation contained in Section 30, no special rule being laid down anywhere in the Act. In some districts it is usual to give receipts for the year's rent at the end of the year. I opine that, in calculating the period of limitation, in case of refusal of a receipt for any particular kist or instalment occurring in the middle of the year, that the above custom should not be overlooked.

Appeals.

The regular appeal in cases decided under this Chapter in which the amount sued for does not exceed 100 Rupees, lies from the decision of a Deputy Collector to the Collector. If the Collector have tried the case in the first instance and the amount sued for do not exceed 100 Rupees, there can be no appeal, but the Collector may grant a re-hearing within thirty days from the date of the decision upon the

ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce at the time of the trial. Where the amount sued for exceeds 100 Rupees, whether the case have been tried in the first instance by a Collector or Deputy Collector, the appeal will lie to the Judge. For further information I refer the reader to the Chapter on Appeals.

CHAPTER IV.

Of complaints of excessive demand of rent, and all claims to abatement of rent under Clause 3, Section 23, (Act X. of 1859.)

Under the heading to this Chapter are included two kinds of suits, similar in their nature, inasmuch as the object of both is to effect a diminution of the rent payable, but slightly differing as to the grounds upon which such diminution would be sought. I shall treat the question of abatement first.

Abatement.

Section 18 of Act X. enacts that every ryot *having a right of occupancy*, shall be entitled to claim an abatement of the rent previously paid by him—1*st*, if the area of the land has been diminished by diluvion or otherwise; 2*nd*, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot; 3*rd*, or if the quantity of land held by the ryot has been proved, by measurement, to be less than the quantity for which rent has been pre-

viously paid by him. These then are the grounds upon which a ryot *having a right of occupancy* could claim to have his rent reduced; and the above Section contains a provision in favor of the ryot corresponding to the provision in favor of the landlord, whereby, on service of a notice of enhancement, the latter can proceed to raise the rent on the three grounds contained in Section 17. There is, however, a difference in the modes of procedure. The ryot who seeks to have his rent reduced, must bring a suit for the purpose; while the landlord who seeks to enhance, has only to serve a notice, and the subsequent proceedings to contest the notice must be taken by the ryot. The reason of the difference is, however, very simple. When a landlord serves a ryot with notice of enhancement, the ryot can quit the land if he do not wish to pay higher rent. His right of occupancy is a privilege—not a liability. He has the right to keep his land as long as he pays a fair and equitable rent, as much as any other will give, but he is not bound to keep it. But when a ryot wants to have his rent reduced, a notice would produce no result, because if the landlord did not wish to accept the reduced rent, he cannot be asked to quit his landlordship. Again, the right to seek abatement is an additional privilege given to the right-of-occupancy ryot. It would be easy to imagine a case, where from half the land being washed away, or some other reason, the former rent would become much more than the remaining land was worth, but the remaining land might contain a house or something else, which the ryot would be very unwilling to lose. In this case a right of occupancy, without the right to sue for abatement, would be a mockery.

Grounds of Abatement.

These, as given above, are three. Whether the area of the land has been diminished by diluvion or not, is a very simple matter to set-

tle, where there is any proof of what the former area was; a measurement will settle how much has been lost by diluvion. If, however, there is no record of what the former area was, a case of this sort might be a very troublesome one. The second ground of abatement presents greater difficulties. The great case of *Mr. James Hills* vs. *Isshur Ghose* has fixed the principles upon which increased rent can be claimed on the ground of the produce or productive power of the land having increased otherwise than by the agency or at the expense of the ryot. But contrariwise the principles, upon which abatement can be claimed, have not as yet been fixed in any case. I shall make further mention of the above case under the head of Enhancement; and the same line of investigation there given, will, I apprehend, be found equally useful in deciding a suit for abatement on the ground of the produce or productive power of the land having decreased. This decrease might take place in many ways. The constant shifting of the rivers in the plains of Lower Bengal often leaves lands that were irrigated and fertile, dry and sterile; and *vice versâ* converts sandy wastes and parched soils into cultivated fields. This one fact alone proves the necessity of a law of abatement and enhancement. As agriculture improves, the necessity of such a remedy will, of course, be obviated to a great extent. Even now in many districts, where lands have become less subject to inundation than formerly, and so less adapted for paddy crops the former staple, Chillies and Oil Seeds have been introduced and grown with much greater profit to the ryots than the former Rice crops. These crops could never have been grown, had the lands remained subject to yearly inundation. What was lost, therefore, by the paddy crops being less abundant than formerly, was doubly, trebly

compensated by these new crops. In order to obtain abatement on the third ground, *viz.*, that the quantity of land has been proved by measurement to be less than the quantity for which rent has been previously paid, it would, I think, be necessary to show that the land was held at so much per beegha. If a ryot held a jote or jumma either without specification of the quantity of land, or in general terms as a jote or jumma of 20 or 30 beeghas, and it was found, on measurement, to contain less, I scarcely think a decree for abatement could be obtained. It must be noticed that ryots only can claim abatement under Act X.; dependent talookdars cannot. Whether persons entitled to the 20 years' presumption and holding at a fixed rent could sue or not, is a question that has never been raised. Such persons certainly have rights of occupancy, and so would come within the strict letter of the law, but their tenures partake more of the nature of dependent talooks. Talookdars can, however, sue for abatement in the Civil Courts.

Similarly a suit for abatement of rent by a Putneedar is not cognizable in the Collector's Court, but must be brought in the Civil Court.) (*No.* 1395 *of* 1863, *Maharajah* of *Burdwan, Appellant,* 18*th March,* 1864. See Index.) A pending suit for abatement will not prevent a Zemindar from recovering arrears at the former rate, until such suit be decided. (*No.* 450 *of* 1863, *Hurrish Chunder Chowdry, Appellant,* 17*th August,* 1863.) In No. 482 of 1863, *Ram Chunder Bose, Appellant,* 17*th August,* 1863, it was held by the Hon'ble L. S. Jackson and the Hon'ble E. Jackson, Puisne Judges, that "the law does not confine the right to claim abatement to ryots with rights of occupancy only. Section 18 lays down certain rules regarding such claims when preferred by such ryots. But other ryots and under-tenants can also sue for abatement when they can show that

they are justly and equitably entitled to it." In No. 2207 of 1861, *Lalla Sheeb Lol and others, Appellants, 3rd March*, 1863—however it was laid down by the Chief Justice and the Hon'ble F. B. Kemp, Puisne Judge, that "it is quite clear that a tenant under Section 8 of Act X. of 1859, (*i. e.* a ryot not having a right of occupancy) is not entitled to a pottah, unless he can agree with his landlord as to the rate of rent. Nor can he, under Section 18, sue for an abatement of rent, inasmuch as he is not a tenant entitled to a right of occupancy." And again in No. 409 of 1862, *Sheik Moheem, Appellant, 17th March*, 1862, it was laid down that the plaintiff ryot, could not have pleaded diluvion as a ground for diminution of rent, inasmuch as he is not a tenant having a right of occupancy. The first of these three decisions seems opposed to the other two; but I apprehend that the opposition is not so great as at first sight it may appear. In the first case a ryot had taken a pottah of 420 beegahs of land @ 14 annas per beegah, and alleged that he found out afterwards that there were only 94 beegahs. As he could have resisted a claim for rent on the ground that he had never obtained possession of 420 beegahs, a suit for abatement was here scarcely the proper mode of proceeding. At any rate a decree could be only declaratory, and the object of the suit *was* to obtain a declaration of the rent to be paid. As a simple case of equity a tenant could not be compelled to pay rent for 420 beegahs, when he had only got possession of 94, and as I have already remarked, he had only to wait till he was sued for arrears, and plead this in defence. But this is a very different case from that where a ryot seeks *to hold on at a reduced rent*, which was the object sought in the other two cases decided and quoted above. It is in this sense that a ryot, not having a right of occupancy, cannot sue for

abatement, *i. e.*, has not the right to bring a suit which has for its object the continuance of his tenancy at a reduced rent. As stated in the last of the above three decisions, "a tenant not having a right of occupancy cannot ask the Court, under Act X., to fix a rate of rent between him and the landlord in reversal of a notice of enhancement under Section 13. He might, however, have brought a suit for excessive demand, or in a suit for arrears have maintained that the amount demanded was larger than he ought to pay" —and this will fall under the other kind of suits treated below.

The remark about diluvion in Case No. 409, quoted above, can scarcely be regarded as a precedent. It is little more than an *obiter dictum.* In No. 2052 of 1862, *Sheikh Evayetoolah and others, Appellants,* 5*th April,* 1864, it was laid down after mature deliberation that a tenant holding under a Kabooliyat could claim abatement of rent for land washed away, unless the terms of the Kabooliyat expressly precluded it—that although Section 18 is limited to ryots having a right of occupancy, yet Act X. *cannot do away with rights which existed independently of the Regulations repealed thereby,* as the right of claiming abatement of rent for land washed away, for instance; and that such a right did exist independently of such Regulations, for the tenant should not suffer by the act of God. As he loses the enjoyment of a portion of what he pays rent to enjoy, his rent should be reduced in proportion. Nor can the landlord complain, as he would have equally been a loser, had the land been in his own hands. A suit for abatement and for the refund of the excess rents exacted for diluviated lands (the lease providing for abatement of the rent proportioned to the diluvion) is cognizable in the Revenue Courts; and the period of limitation will begin to run, not

from the time of the diluvion, but from the time of exaction of the excess rent. *(No. 1565 of* 1863, *Mr. G. R. Borry, Appellant, 6th May,* 1864.*)*

Complaints of excessive demand.

I have pointed out above that a suit for abatement, meaning thereby a suit to hold on at a reduced rent, can be brought only by a ryot having a right of occupancy, because such a ryot alone has any claim to keep his land against the will of his landlord. The law not only protects him by preventing the landlord from arbitrarily ejecting him, but steps in to fix a fair and equitable rent between the parties, reducing the former rent, where a change of circumstances has rendered it too high, and enhancing it, when a similar change, working in an opposite direction, has rendered it too low, as the remuneration to which the proprietor of the land is entitled for the loan or use of this natural agent for production. I now come to the remedy which a temporary tenant has, upon whom his landlord makes a claim for an undue amount of rent. Section 14 lays down that "*any* under-tenant or ryot, upon whom a notice of enhancement has been served, may contest his liability to pay the enhanced rent demanded of him either by complaint of excessive demand of rent, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent." Now the words "any ryot" must be taken with reference to the class of ryots defined in Section 13, upon whom a notice of enhancement can be served; that is, ryots holding or cultivating land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired or became cancelled. Here there is nothing said about a right of occupancy, and the ryots in question may or may not have such right. Therefore any ryot *except the ryot holding on a written engagement specifying*

the period of such engagement, may be served with notice of enhancement and may contest the claim to higher rent, either by complaint of excessive demand of rent, or in answer to a suit preferred against him for recovery of arrears of the enhanced rent. I shall now quote from a few decisions of the High Court, and then proceed to point out how this portion of the law has become fixed. In *No.* 409 *of* 1862, given above, it is laid down as follows :—"If the ryot has no right of occupancy, and the landlord have demanded too much rent and distrained his goods, he might have brought a suit for excessive demand of rent; or if the landlord had sued him for the full amount mentioned in the notice, he might have resisted that suit, and maintained that the amount demanded was larger than he ought to pay." In *No.* 1953 *of* 1862, *Kalee Sheik, Appellant, 24th September,* 1862, it was clearly laid down that in the case of ryots not having a right of occupancy, the landlord may, if he will, eject them, if they will not agree to the rate of rent proposed him; but if he serves them with notice and elects to proceed for enhanced rent, he cannot recover any amount of rent he chooses to mention in the notice, but is limited to what is fair and equitable. From the above, I think, three propositions will be evident.

1. A ryot, *not having a right of occupancy,* if served with notice of enhancement in Cheyt, cannot at once bring a suit to fix a lower rent than that demanded and compel his landlord to let him hold on at such rent; but he can continue in possession and wait till his landlord takes proceedings to recover the enhanced rent. If such proceedings be by distraint, he can make a complaint of excessive demand; and if by a suit for arrears, he can set up in answer the plea of excessive demand. It will be for the Court, in either case, to decide what is a fair and equitable rent. Of

course, it will rest with a landlord who serves a notice of enhancement to see if the ryot will pay what is demanded; and if not, he can proceed at once to eject before receiving rent for the new year; but if he let the matter rest after serving the notice, he will, in case of dispute, afterwards have to be content with the rate awarded by the Court.

II. A ryot having a right of occupancy may do all that the ryot not having such right can do, and besides, if served with a notice of enhancement, he can bring a suit at once to contest that notice and have the rate fixed.

III. The ryot having a right of occupancy may, at any time, without any notice being in question, sue for abatement of his former rent, if he have any of the grounds in Section 18 to go upon.

When, however, a ryot with a right of occupancy brings a suit to contest a notice of enhancement altogether, on the ground that he is not liable to have his rent enhanced, it will not be incumbent on the Court to go into the question of rates and fix the rate. In *No.* 240 *of* 1862, *Gunga Pershad Singh, Appellant,* 11*th November,* 1862, a suit was brought to resist a notice of enhancement altogether and obtain an istemraree pottah. The plaintiff contended that he was not liable to enhancement; that he had held for 48 years at a fixed rate; and that, under Sections 3 and 4 of Act X., he had a right to hold at that rate. The Judge found he had not so held. The High Court ruled that he was right in not going into the question whether the enhancement sought to be imposed was fair or not, as that was not the point at issue.

Limitation.

There is no special rule on this subject contained anywhere in the Act. The limitation will therefore be under the general rule in Section 30, that is, these suits must be brought

within one year. It is very important to remember this. A ryot who seeks abatement on any of the grounds contained in Section 18, must sue within one year from the date of the accruing of the cause of action. This is the more important to bear in mind, as the landlord who seeks to enhance is not bound by any rule of limitation applicable to the enhancement.

Appeals.

The regular appeal in all these cases, whether tried by a Collector or Deputy Collector, lies direct to the Judge.

NOTE.—Since the text of this Chapter has been put in type, it has been ruled by a full Bench of the High Court, in the case of *Ram Dhun Bannerjee and others, Appellants*, first heard on the 4th July, 1864, that Putneedar *can sue* his Zemindar in the Revenue Courts for abatement of his putnee rent. This will do away with the ruling (No. 1395 of 1863, Maharajah of Burdwan, Appellant, 18th March, 1864.)

CHAPTER V.

Of suits for arrears of rent due on account of land either kherajee or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like.

Under the above heading are included by far the great majority of suits decided under the Rent Law in the Courts of the Collectors and Deputy Collectors in Bengal.

Definition of an arrear of rent.

The first question is, what is an arrear of rent? It is defined by Section 20 of Act X. to be "*any instalment of rent, which is not paid on or before the day when the same is payable according to the pottah or agreement, or if there be no written specification of the time of*

payment, at or before the time when such instalment is payable according to established usage;" and unless otherwise provided by written agreement, it is declared liable to interest at twelve per cent. per annum. I may here remark, for the benefit of those new to the subject, that since the introduction of Act X., the *kists* or instalments in which the rent is to be paid are now more generally than before mentioned in all written agreements. Various rates of interest, not unfrequently half an anna per rupee per month, are also expressly contracted for.

Form of Plaint.

By Section 12 of Act VI. (B. C.) of 1862, it is enacted that the plaint in a suit for the recovery of rent shall specify the name of the village and estate, and of the Pergunnah or other local division in which the land is situate; the yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; the amount in arrear; and the time in respect of which it is alleged to be due; and if the arrear is alleged to be due from any ryot, the statement shall further specify the quantity of land, and where fields have been numbered in a Government Survey, the number, if it be possible to give it, of each field. But very rarely, if ever, is the number thus given; and in many Districts the quantity of land cannot be given, as the ryot holds a jote or jumma of so many rupees rent, and cannot even himself tell, except by guess, how much land he has. Lately, however, measurements are becoming much more frequent, and landlords are seeking to acquaint themselves with the boundaries and areas of their estates. After the plaint has been filed and the Summons issued, during the interval that must elapse before a decree can be obtained, the ryot or other person who owes the arrear, may either, 1*st*, remove his

Arrest before Judgment.

effects so that there would be nothing to satisfy the decree when obtained; or 2*nd*, he may be without effects, and may abscond to save himself from the consequences of the decree. The first is provided against by "attachment before judgment," which is applicable to all suits under the Rent Law. I shall speak of this in my Chapter on General Procedure. The second is provided for by "arrest before judgment," which being applicable to the class of suits treated in this Chapter, and also to suits against Agents for the recovery of money, papers, or accounts, (Chapter IX) I shall deal with here. If then the plaintiff in either of these classes of suits apprehends, that the defendant will abscond instead of appearing to answer the claim, he may with his plaint file an application for the issue of a warrant. The officer trying the case shall then examine the plaintiff or his agent on oath or affirmation, and shall inspect the documents adduced by him in support of his claim, and if there be *primâ facie* grounds for believing that the claim is well founded, and that if a summons only be issued, the defendant will abscond, he shall issue a warrant, fixing a reasonable time for its return. The officer executing this warrant shall deliver to the defendant a notice, containing the particulars of the claim and requiring the defendant, if he contest it, to bring his documents with him. But this warrant cannot be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure, which is liable to sale in execution of a decree (Section 49). When arrested, the defendant is to be brought with all convenient speed before the Collector or other officer; and unless he deposit the amount of the claim, may be detained in custody till the result of the trial. (Section 50). He may however be released on giving security for his appearance, if the case

Proviso.

cannot be at once adjudicated, but the adjudication should be made with all convenient speed. (Section 51). If it appear subsequently that the arrest was applied for without reasonable cause, damages may be awarded to the defendant in the decree.

Damages for arrest without reasonable cause.

These damages are *in no case to exceed one hundred rupees*, and they are to be assessed with reference to the injury or loss which the defendant may have sustained by reason of his arrest, or detention in jail during the pendency of the suit. (Section 53). In case the warrant cannot be executed, the case may either be postponed with a view to the plaintiff's applying for a second warrant; or a proclamation may be at once issued, fixing a day for the hearing of the case, not less than ten days from the date of publication at the residence of the defendant. The proclamation should also be fixed up at the Court or Office of the Collector or other officer. In case the defendant appear in pursuance of this proclamation, he is to be dealt with as if arrested in execution of the warrant. (Section 52). If he do not appear, of course the Court will proceed to pass an *ex parte* decree. If the defendant have appeared under the above provisions and a decree be subsequently passed against him, he may be detained, as if arrested in the execution of the decree. (Section 84).

Procedure when a landlord refuses to accept rent tendered.

It frequently happens that a ryot and his landlord are disputing either about the rate of rent or about the payment of Abwabs or some other matter, and the landlord refuses to accept the rent tendered by the ryot. A right of occupancy might thus be voided, if the landlord refused rent for a length of time, and then sued the ryot for the gross sum at a time when he would be unable to pay

all down; and so the landlord would get a decree, which the ryot being unable to satisfy, he would be ejected. In many other ways a refusal to accept rent might injure the ryot; and not least of any it is a great injury for a tenant, who is willing to pay, to be plunged into the expense, annoyance, and delay of litigation. To obviate all this, it has been enacted by Section 4 of Act VI. (B. C.) of 1862—the Supplement of Act X. of 1859—that any under-tenant or ryot, who shall have tendered payment of what he shall consider to be the full amount of rent due from him at the date of tender, to the person in receipt of the rent of the land, at the place where the rents are usually payable, shall, if the amount so tendered be not accepted and a receipt in full forthwith granted, be lawfully entitled, without any suit having been instituted against him, to deposit such amount in the Collectorate to the credit of the landlord. This deposit is declared to have, for the depositor, the same effect as a payment of the sum to the landlord. The following Section (5) goes on to enact that the application for the deposit is to be made on a stamp of the same value as would be required in a suit for arrears of rent of the same amount; and is to be accompanied by a declaration (in a given form) to the effect that the declarant or his agent *did tender* the amount at the place where the rents are usually payable, *that the tender was refused,* and that the *amount tendered is to the best of the declarant's belief the full sum due.* Any false averment is declared punishable as fabrication of false evidence. After these formulæ have been complied with, the Court will issue a notice, free of cost, to the person to whom the rent is payable or to his Naib, Gomashtah or other agent, informing him that the sum has been so deposited to his credit, and will be paid over on demand; also that if any other claim is to be made in respect of the rent, it must be

made *within six calendar months* of the date of the notice, or it will be for ever barred. And Section 6 enacts that when a deposit has been made as above, no suit shall be brought against the person making the deposit or his representatives, on account of any rent which accrued due prior to the date of the deposit, *unless such suit is instituted within six months from the date of the service of the notice.* A very little reflection will shew the inestimable benefit derivable from the above provisions, of which a ryot may avail himself, if a landlord deals unjustly with him.

Payment into Court after institution of suit.

The defendant, in a suit for arrears of rent *as well as in any other suit under Act X of* 1859 *or Act VI (B. C.) of* 1862, may, after the institution of the suit, pay into Court such sum of money as he considers to be due to the plaintiff. 1*st.*—If he have duly tendered the same to the plaintiff before the institution of the suit, he may pay in the sum *without any costs* up to date of payment. If the plaintiff then elect to proceed with the suit, and ultimately recover no further sum than this amount, he shall be charged with the whole of the costs incurred by the defendant; but if he ultimately do recover a further sum, the defendant shall be charged with the whole of the costs of the suit. 2*nd.*—If he have made no previous tender, the defendant may pay into Court such sum as he considers to be due together with *all costs* incurred by the plaintiff up to the time of payment as upon a suit instituted for the amount so paid in. If the plaintiff after this elect to proceed with the suit and ultimately recover no further sum than this amount, he shall be charged with all the costs incurred by defendant *subsequently to such payment.* But if he subsequently recover a further sum, the defendant shall be charged with all costs upon the sum for which plaintiff ultimately obtains a decree. The costs paid

in with the sum admitted must, of course, be included in the calculation.

In either of the above cases the amount paid into Court shall be *at once paid out* to the plaintiff. (Sections 7 and 8 of Act VI. (B. C.) of 1862.) The difference between the two cases therefore is, that if *no previous tender* have been made, the costs up to the time of paying in the amount admitted must be also paid in; *but if a previous tender* have been made, no costs will be paid in. In the latter case also the defendant will have to pay no costs, if the plaintiff ultimately do not get a decree for more, while in the former case he would have to pay the costs incurred by plaintiff up to the date of his (defendant's) paying in the sum he admits. In both cases, if the plaintiff recover more than defendant has paid in, the costs of the entire suit will fall upon the latter.

Damages in rent suits.

In any suit for arrears of rent, if it shall appear to the Court that the defendant has, *without reasonable or probable cause,* neglected or refused to pay the amount due by him; or that he has not before the institution of the suit tendered such amount; or in case of refusal of the tender, that he has not deposited such amount in the Collectorate, then the Court may award the plaintiff damages not exceeding twenty-five per cent. on the amount of rent decreed, such damages to bear interest and to be recoverable in the same manner as any other sums decreed under Act X. (Section 2, Act VI.) It will appear that a defendant who is sued for damages may plead, 1*st*, that he had reasonable or probable cause for not having paid his rent, *e. g.*, sickness, *loss of cattle*, failure of crops, &c.; or 2*nd*, that the amount was duly tendered and refused; or 3*rd*, that it was lodged in the Collectorate under the provisions of Section 4. If any of these pleas were made, an issue would have to be raised and determined thereon. In

No. 1228 *of* 1863, *Horro Mohun, Appellant, 9th September*, 1863, the High Court laid down that the above damages were not recoverable unless specially alleged and claimed in the plaint. This is in accordance with the general rule of law, that a plaintiff must state his whole case and all he wishes the Court to grant him by way of redress in his plaint, that the defendant may have notice what case he has to meet, and so be enabled to prepare his defence. In the instance before us, the defendant being aware that damages are claimed, will be able to plead one of the three pleas given above, if he considers that he has grounds to go upon. In (*No.* 2675, *of* 1863, *Bolye Chund Dutt, Appellant, 22nd June*, 1864,) it was laid down that these damages should be awarded only under special circumstances, and on proof of special refusal or neglect to pay the rent.

In the same way that a plaintiff may obtain damages, a defendant may also be awarded damages on somewhat similar grounds; that is to say, if the plaintiff have instituted the suit without reasonable or probable cause; or if the defendant have deposited in the Collectorate the full amount which the Court shall find to have been due at the date of such deposit. The damages are not to exceed twenty-five per cent. on the whole amount claimed by the plaintiff, and are recoverable with interest as any other sums decreed under Act X.

Reserving for my Chapter on General Procedure the other points in which Rent Suits assimilate to other suits under Act X., I shall now pass on to such points peculiar to this class of suits as it is important to consider.

What rents recoverable.

"Rent due on account of land either kherajee or lakhiraj" includes as well the rent payable by the actual cultivators, as that payable by any class of middlemen, who hold intermediate between the landlord or landowner and the ryots. An *ijarahdar* or

farmer may be sued for arrears due on his farming lease. A subordinate talookdar, that is a talookdar who pays his rent to the Zemindar and not direct to Government, may be sued for arrears of the rent of his talook. A Putneedar may be sued under Act X., or the Zemindar may proceed under Regulation VIII. of 1819. (See Chapter XVII). Section 166 of Act X. does not rescind the latter mode of procedure nor prohibit the former. The proprietor of lakhiraj or rent-free land, who lets to a ryot, may sue, and the ryot who sublets to another ryot may sue also. In Behar and other parts of Bengal a custom prevails by which one ryot often sublets to another on condition of receiving half the crop. There is a sort of partnership in the transaction, but I opine that a suit to recover this rent could be brought under Act X—"Rights of pasturage, forest rights, fisheries" explain their own meaning—but the application of the concluding words "*or the like*" has given greater field for discussion. I shall give such points as have already been fixed, remarking merely that a close consideration of the principles on which these have been decided will be the best guide in other cases not already adjudicated. A suit for arrears of house-rent and for the ejectment of the tenant from the house is not cognizable under Act X. House-rent includes the rent of the ground upon which the house stands, but as the items are not separable, the claim cannot be heard. (*Nuwab Hajee Mahammad Khan Kuzalbash, Appellant, 28th June,* 1862.) Of course, if the ground rent alone were sought to be recovered, the suit would lie. A suit for the right to erect golahs at certain ghâts on the land, and also to collect certain duties from persons who used these ghâts and golahs and for other purposes is not cognizable. (*No.* 469 *of* 1861, *Mr. James Furlong, Appellant, 17th November,* 1862. In this case, it will be observed, no specific land was

let. The suit was for an incorporeal right, but when the land is leased for the erection of golahs, although the lease includes the right to levy golah duties, a suit will lie in the Revenue Courts. For whatever purposes the surface of the land is used, if the subject of the lease be land, and the rent issues out of the land, and is due on account of and for the use of land, a suit for arrears must be brought in the Collector's Court. (*No.* 464 *of* 1863, *Messrs. Robert Watson & Co., Appellants, 6th April,* 1864). Similarly, in *No.* 3969, *of* 1863, *Gyatree Dabea, Appellant, 7th June,* 1864, a suit for arrears of rent due on account of a hât, *i. e.*, on account of the land occupied by the hât, was held cognizable in the Revenue Courts, the rent issuing out of the land used for a certain purpose, which increased its value. A suit for arrears of rent due on account of an indigo factory is not cognizable, for though land is certainly included, still the land is the least part of the indigo factory, which includes buildings, implements, contracts with the ryots &c. (*No.* 841 *of* 1862, *Oddit Chunder Paul and others, Appellants,* 1*st April,* 1863,)—*and* (*No.* 877 *of* 1862, *Chitramonee Dasse and others, Appellants, same date.*) From these precedents is deducible the principle, that rent can be sued for alone, but when other claims are linked with that for rent the suit must be brought in the Civil Court. A suit for arrears of rent due from a co-sharer in the estate cannot be brought under Act X. (*No.* 101 *of* 1862, *Goluck Chunder Roy and others, Appellants,* 16*th September,* 1862.) (*No.* 453 *of* 1863, *Syed Hyder Aly, Petitioner, 5th April,* 1864.) One of two or more shareholders, to whom jointly an ikrarnamah for rent has been given, in which the amount of rent is specified, can recover separately in a suit for arrears, if his specific share be averred in the plaint, and be not denied by the defendants. (*Nos.* 1298 *to* 1301 *of* 1863, *Umrit Chowdry*

and others, and Ram Jewun Chowdry, Appellants, 6th May, 1864.) But a claim for rent by a shareholder in an estate held in coparcenary, cannot be maintained if the defendant denies his liability. (*Dhurm Lol Singh, Appellant, 8th July,* 1864.) An assignment of rents having been made, the assignee must sue for the recovery of the rents in the Revenue Court. (*No.* 173 *of* 1863, *Kishen Koomar Mittar and others, Appellants, 8th January,* 1864,) and (*No.* 1857 *of* 1861, *Shama Soonderee Dasee and others, Appellants, 4th December,* 1862.). Notice, however, of the assignment must be given to the tenants; otherwise they will not be liable to the assignee for payments made correctly in the absence of such notice. (*No.* 71 *of* 1862, *Sheik Attapyee Mowlah, Appellant, 21st August,* 1862). A suit by one putneedar against his co-putneedars for his share of the rents collected by them cannot be entertained under Act X., but must be brought in the Civil Court. (*No.* 1417 *of* 1863, *Soobhul Singh and others, Appellants, 17th February,* 1864). A suit against a lessee for arrears of rent due on his lease and in default against his surety will lie. (*Kumar-un-nissa Begum, Appellant, 28th June,* 1862). In a suit against the heirs of a deceased farmer for rent accruing after his death, it was held that the obligation to pay rent depended upon proof of occupancy, either actual or constructive. (*Khaja Abdool Hossein Khan, Appellant, 23rd May,* 1862). A landlord cannot sue a tenant for rent of land which is allowedly not in such tenant's possession, and which the landlord admits he knows has been taken by Government for a public purpose. (*No.* 96 *of* 1861, *Ram Kishen Dass, Appellant, 26th March,* 1862.) A. leased to B. certain lands for the consideration of a certain sum of money. B. was to pay the Government revenue and to reimburse himself from the remainder of the assets. There

was also a clause in the lease, that an annual measurement was to be made in presence of the Ameens of A. and B., who were to be responsible according to the measurement. A. sued to recover rents for excess measurement, but it was held that the nature of the transaction made the suit only cognizable in the Civil Courts. (*No.* 815 *of* 1863, *Syed Shorakut Alee, Appellant,* 23*rd April,* 1864).

Arrears of rent cannot be recovered until it be shewn that the relation of landlord and tenant exists between the parties. (*No.* 1521 *of* 1863, *Mahomed Assun Chowdry,*) *Appellant, and No.* 1515 *of* 1863, *Nauth Tagore, Appellant,* 31*st March,* 1864). Hence if a ryot be sued for rent by a person to whom his rent is not payable, the proper defence to make is to plead that the relation of landlord and tenant does not exist, and to mention to whom the rent is payable. The burden of proving the relation will, therefore, be thrown upon the plaintiff. But this relation will be assumed, and a contract creating the relative position of landlord and tenant will be implied, when a ryot chooses to cultivate a Zemindar's lands and the Zemindar permits him. Tenancy in many parts of Bengal commences by squatting, and in such cases the squatter is under obligation to pay a fair rent, when the Zemindar may choose to demand it. (*No.* 3358 *of* 1863, *Nitta Nund Ghose and others, Appellants,* 20*th June,* 1864.) If a defendant in a rent case plead that the land is rent-free, the only issue is one of fact, whether rent has been paid before the suit or not. (*No.* 1640 *of* 1862, *Jodhu Singh, Appellant,* 9*th March,* 1864.) But if the defendant admit himself to be the ryot of the plaintiff for a portion of the land referred to in the suit, the burden of proving a plea that he is not plaintiff's ryot for the rest of the land will fall on the defendant. (*No.* 98 *of* 1862, *Gooroo Pershad Roy, Appellant,* 5*th August,* 1862.)

If a party, against whom a decree of the Civil Court has been given, be not ousted from possession by the execution of that decree, he is entitled to collect the rents, though of course he will be subject to render an account of them to the decree-holder. (*No.* 323 *of* 1861, *Punchanun Banerjee, Appellant, 27th March,* 1862.)

A Revenue Court has power, under Act X., to try whether a party is the *benamee* holder of a certain farm and to decide who is the real lessee. (*No.* 61 *of* 1862, *Heera Lal Bukshee, Appellant, 11th November,* 1862). (*Goluk Chunder Baboo and others, Appellants, 26th June,* 1862). Section 260, Act VIII. of 1859, does not preclude a person purchasing *benamee* from setting up his title against a person *not* being a certified purchaser, or claiming through a certified purchaser. It merely provides that no action shall be brought against a certified purchaser, upon the ground that the purchase was made *benamee.* (*No.* 944 *of* 1862, *Mussamat Shoro Sutty Dasee, Appellant, 23rd April,* 1863).

If an under-tenant be ousted from his tenure by a third person and not by his landlord, he will be liable for the rent of the period during which he remained out of possession. But if his landlord be the party who ousted, he will of course not be so liable. (*No.* 943 *of* 1862, *Khajah Abdool Gunny, Appellant, 23rd April,* 1863). See also (*No.* 545 *of* 1861, *and No.* 814 *of* 1861, *Musumat Mohun Mollah, Appellant, 27th March,* 1862).

Receipt of a few instalments of rent by an auction purchaser, before he has time to look into all the under-tenures on his estate, cannot be held to bind him so as to be a bar against his voiding those tenures. (*No.* 1318 *of* 1863, *Radhacunt Dutt and Luckeecunt Dutt, Appellants, 21st January,* 1864). The general rule of law is that the receipt of rent acts as a waiver with respect to rights that

existed before such receipt. For instance, if a plaintiff landlord obtain an ejectment decree and accept rent for a subsequent period, he will be held to have waived his right to eject and cannot enforce it. The receipt of rent amounts to a new contract for tenancy. But a man cannot be held to be bound by what he does unwittingly. So the auction purchaser, who receives rent without having had time to acquaint himself with the under-tenures on his newly purchased estate, will not be held to be bound by such receipt; but if, after being aware of the nature of an under-tenure, he accept rent for the same, he will be held to have waived his right to void such under-tenure.

Mesne profits.

Mesne profits are not recoverable in the Revenue Courts, but must be sued for in the Civil Court. (*No.* 1768 *of* 1861, *Ruttun Monee Dosee, Appellant,* 13*th February,* 1863.) And notwithstanding Section 23 of Act X. a suit to recover possession of land, if mesne profits be also claimed, may be brought in the Civil Courts. (*No.* 767 *of* 1863, *Ram Lochun Dass, Appellant,* 8*th January,* 1864). But see Section 10, Act VIII. of 1859. The Chief Justice in his Minute of 6th April, 1864, has, however, recommended that in case of an amendment of the Act, a clause should be inserted, allowing mesne profits to be recovered in the Revenue Courts in suits for ejectment, under Section 23. Why not also in suits for possession?

Previous suit dismissed.

If a suit for arrears of rent of a previous year have been dismissed, a second suit for the same rent in which the propriety of the order of dismissal is called in question, will not lie. (*No.* 197 *of* 1861, *Isshur Chunder Bose, Appellant,* 27*th March,* 1862). It is nowhere stated in Act X. that a decree against a plaintiff in a former case, *i. e.,* a

dismissal is a bar to another suit for the same demand. It is merely upon general principles that it is a bar. (*No.* 1188 *of* 1862, *Tara Persad Roy Chowdry, Appellant,* 12*th August,* 1862). In this case the former suit was dismissed for want of evidence. This demand was subsequently amalgamated with a further claim. The Deputy Collector decreed both. The Judge, on appeal, reversed the part of this order relating to the former demand, and the High Court upheld this order. The general principles are thus laid down by Mr. Macpherson in his Civil Procedure, page 50, (*Fourth Edition*):—" A decree or order of dismissal is a bar only where the Court has thereby determined that the plaintiff had no title to the relief sought by the plaint, and only so far as such decree was in its nature final." The subject is rather a difficult one, and it is hard to lay down any rules of general applicability. The dismissal of a suit for arrears of rent against several ryots, on the ground of their joint liability not being proved, (misjoinder), is not a bar to a suit againts the ryots separately. (*No.* 1744 *of* 1862, *Baboo Tilokdharee Sahoo, Appellant,* 22*nd April,* 1863).

A decree for a particular year's rent affords a presumption, though a rebuttable one, that the rent of years previous to that for the rent of which the decree was obtained, had been paid. (*No.* 1336 *of* 1860, *Sheeb Narain Bhattarcharjya, Appellant,* 5*th September,* 1861,) also (*Kishen Jivan Bukshee,* 21*st May,* 1862.) *See* also Index under Claim.

Set-off.

The Revenue Courts are not competent to investigate pleas of set-off, when the accounts which include the items of set-off have not previously been admitted by the plaintiff, or when the matter of the set-off involves enquiries beyond the jurisdiction of these Courts. (*No.* 10 *of* 1861, *Moulvy*

Abdool Ally, Appellant, 5th October, 1861.) In the case of *Parvatee Churrun Pal, Appellant,* 11*th June,* 1861, defendant pleaded as a set-off, that a third party who was his debtor had to receive a certain amount from plaintiff on account of some other property. It was held that this was no set-off at all, and that no set-off can be listened to, which does not arise immediately between plaintiff and defendant. In *No.* 587 *of* 1862, *Mussamut Joykooer Dubain, Appellant,* 3*rd February,* 1864, the defendant had pleaded that, by an understanding or agreement between him and the plaintiff, he was allowed to retain his rents in consideration of the expenditure incurred by him on the plaintiff's account. It was held that this plea must be investigated, and the case was remanded for such investigation. Again, payment by a defendant under the plaintiff's direction to another or for a specified purpose, is tantamount to a payment to plaintiff himself, and is a sufficient answer to plaintiff's suit. This is rather a plea of payment than set-off, and is open to a defendant in a suit under Act X. (*Joykooer, Appellant,* 18*th July,* 1864).

Payments how to be credited.

Payments of rent cannot be credited to arrears of previous years unless made on that understanding. Payments made in any year must be presumed to be for the current year, unless the contrary be shown. But surplus payments of any year should be credited to past, not to subsequent, years. (*No.* 1832 *of* 1863, *Tara Money Dasee and others, Appellants,* 17*th February,* 1864). Again, according to the general rule of law, if a general payment be made in any year without specification of what year's rent is to be thereby liquidated, and if there be an arrear of the previous year, the payee is at liberty to apply such part of the money as is necessary to satisfy the arrears of the pre-

ceding year. (*No.* 410 *of* 1863, *Mr. Robert Ahmuty, Appellant,* 22*nd February,* 1864). The sense of these two decisions taken together would seem to be, that payments made on account, without any direction as to what year's rent was meant to be thereby liquidated, might be applied to satisfy the arrears of a former year, but could not be so applied, if the payer did not consent, and made the payment with the expressed purpose of liquidating the rent of the current year. *See* also (*Ranee Suvarnomayi, Appellant,* 30*th July,* 1864.) An agreement to pay rent at a particular place will be waived by receipt of payment in another place. (*No.* 2125 *of* 1862, *Rakhal Dass Mookerjee, Appellant,* 29*th April,* 1863).

Interest.

By Section 20 of Act X. arrears of rent are declared liable to interest at 12 per cent. per annum, *unless otherwise provided by written agreement;* that is, 12 per cent. may be awarded by the Court, but the parties may settle any other rate they please among themselves. All laws limiting the rate of interest have been long rescinded in Great Britain; and borrowers and lenders, as well as those engaged in other monetary transactions, have been left to settle this matter according to the market rate, and as their respective interests may prompt. The same was done for India by Act XXVIII. of 1855, and parties may now contract for any rate of interest they may mutually agree to. In some parts of Bengal very high rates are inserted in Kabooliyats, and when such rates are sued for and recovered, as they are in the nature of damages, it ought to be a question, whether the damages under Section 2 of Act VI. should be also awarded. Interest on instalments of rent paid before the institution of the suit, but subsequent to due dates of payment, is recoverable when there is a

stipulation for payment of such interest. (*No.* 20 *of* 1862, *Rutty Kant Bose, Appellant,* 30*th July,* 1862.) In *No.* 402 *of* 1863, *Alum Chunder Shaw Chowdry and others, Appellants,* 22*nd March,* 1864, the idea is favoured that such interest could be recovered without the above stipulation, if the plaintiff has been endamaged by the defendant's want of punctuality in paying his rent in the proper instalments. Even where a stipulation does exist for the payment of this interest on lapsed instalments, if the landlord go on for years receiving subsequent rent without making a claim for interest, or seeking to apply subsequent payments in satisfaction thereof, it appears that he will be held to have waived his claim thereto. (*Nos.* 278, 279, and 280 *of* 1862, *Dindoyal Poramanik, Appellant,* 30*th March,* 1863.)

Intervenors.

In civil cases if it appear to the Court at any hearing of a suit, that all persons, who may be entitled to, or who claim some share or interest in, the subject matter of the suit, or who may be likely to be affected by the result, have not been made parties to the suit, the Court may direct that such persons be made either plaintiffs or defendants, as the case may be. (Act VIII. of 1859, Section 73). The case will then proceed as if those persons had at first been parties, and they will be bound by the decision, as the original parties would be bound, with the same privileges of appeal for righting themselves, if they think they have been wronged by the decision. The application of this principle to the rent law is a difficult subject and one which has created a good deal of discussion, and about which various opinions exist. If A. sues B. for rent, while A. and C. are disputing as to the right to receive the rents, or as to the ownership of the estate in which B.'s land is situate, the question of legal title at once arises, a question which

must be adjudicated upon by a Civil Court; and with which the restricted jurisdiction of the Revenue Courts is not competent to deal. The difficulty has been thus met. Section 77 of Act X. enacts that, "when in any suit between a landholder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or under-tenant is disputed, and such right is claimed by, or on behalf of, a third person, *on the ground that* such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not effect the right of either party, who may have a legal title to the rent of such land or tenure to establish his title by suit in the Civil Court, if instituted within one year from the date of such decision." Now I have stated above that this Section has been much discussed, and I may add that no Section has been more generally misunderstood. It will appear that no person, however good in law his title may be, can intervene under Section 77, if he have never been in possession of the rents; that is, if he cannot plead, that *before and up to the commencement of the suit, he or a person through whom he claims has actually and in good faith received and enjoyed the rent.* If another person with a bad title have stepped into possession and have collected the rents, he will be entitled to continue collecting till he of the good title go and prove his title in a competent Court. For all that has been collected and appropriated under a bad title, he

who has acted under such a title, will be liable to account in a suit for mesne profits, and there is no more hardship done, than is done in the case of any other possessor of a good title, who has been kept out of any other property by the setter up of a bad title. Section 77 then merely says, the question of title must be tried in the Civil Court, but the Collector may try the question of possession, and the party who is found to be in possession, in the actual receipt and enjoyment of the rents, must get a decree for the same. A sort of analogous inquiry is that conducted by a Magistrate under Chapter XXII. of the Criminal Procedure Code, where the question of *possession* can alone be looked at, and that of title is referred to the Civil Court.

The only point then for the Collector to decide as between a plaintiff and a third party or intervener is,—"Has the plaintiff or the intervener been in receipt of the rents up to the time of the claim?" and no question of title should be gone into. (*No.* 473 *of* 1862, *Prollad Singh and others, Appellants,* 19*th March,* 1863,) and (*Nos.* 193 *to* 197 *of* 1863, *Vajun Singh and others, Appellants,* 4*th August,* 1863), also (*Messrs. Watson and Co., Appellants,* 6*th March,* 1862). A. sued B. for rent, alleging both his right and possession. B. denied A.'s possession, and pleaded that he paid his rent to C., a third party, as rightful heir in possession. C. appeared and supported this allegation. The case was remanded by the High Court for enquiry into the actual receipt and enjoyment of the rent by the third party, upon which point, the only essential one, enquiry had not been made. (*No.* 60 *of* 1862, *Mirza Zahid Ally, Appellant,* 5*th August,* 1862). In the same way a person, alleging himself to be the perpetual lessee of the land, sued a ryot for rent. The ryot pleaded that plaintiff was not the real lessee, and that he was not his ryot. The zemindar supported this defence,

saying that he had not given a lease to the plaintiff, but to another person, and as this person was dead, the lease had reverted to him, the zemindar. The Lower Court found that the lease held by plaintiff was a valid document, and decreed the claim. The case was remanded that evidence might be taken as to which of the claimants had been in receipt of the rents. (*Shama Charan Haldar, Appellant,* 13*th May,* 1862). Again, in a suit for arrears of rent, the defendant urged that the lands were not in plaintiff's village but in another village, the property of a third party, who also appeared and supported defendant in the above answer. An Ameen was appointed to visit the land, and he reported that there was no such village as that alleged by the defendant and the third party, and that the land really was in plaintiff's village. The plaintiff accordingly got a decree. This decision was held to have missed the chief point that should have been enquired into, *viz.*, whether the third party had received the rents from the defendant. (*Chatouri Misser and others, Appellants,* 8*th May,* 1862). A tenant of the plaintiff, who alleges that defendant is his under-tenant, can be an intervener, and if this allegation be proved, the plaintiff's case must be dismissed. (*No.* 3172 of 1861, *Gungadhur Ghose, Gomastah, Appellant,* 27*th January,* 1863). If a third party, in a suit for arrears of rent, claim to have been in possession, and to have collected the rents from the tenants during the time for which rent is claimed by the plaintiff, such third party should be made a party to the suit, which should not be decided as between plaintiff and defendant only. (*Kundra Cradhan and others, Appellants,* 11*th June,* 1862). As Section 77 is worded and carried into practice, the intervener generally himself takes action and claims to be heard, but it seems to the author that there is nothing in the law

to prevent the Court making him a party to the case, if the defence disclose grounds for doing so, and that such a course should be followed. An intervener, who has not been a party to the suit in the Lower Court, cannot appeal. (*No.* 2025 *of* 1862, *Mohendro Chunder Ghose, Appellant, 28th April,* 1863); but in the case of *Tara Chand Poddar, Appellant, 5th September,* 1861, such an appeal having been made to the Judge, the Sudder Court held that the Judge should have remanded the case to the Collector to be tried *de novo.* How far this case will be allowed to stand as a precedent, remains yet to be seen. The only ground upon which a remand could have been ordered is on the ground that the Collector should have made the intervener a party to the suit, and did not. A zemindar who had been put in possession under Section 25 of Act X. would be held to be in possession within the meaning of the Section under consideration. (*Mohesh Chunder Pal Chowdry and others, Appellants, 14th June,* 1862). If the suit as against the defendant be not proved, it would not be incumbent on the Court to go into the question between the plaintiff and the intervener. (*Aziz Ahmed Ghazee, Appellant, 24th April,* 1862).

The object of the provision contained in Section 77, is that the Revenue Court should not anticipate the decision or jurisdiction of the Civil Court. If, however, a Civil Court have already decided the point of title, the decree of the Civil Court in the hand of the plaintiff or intervener would entitle him to succeed, even although his opponent had been in the enjoyment of the rents up to the time of the suit. But the decree must be clear as to the lands for which rent is sought being included in it. (*No.* 211 *of* 1863, *Syed Ahmed Reza, Appellant, 5th August,* 1863.) (*No.* 128 *of* 1861, *Anund Mohun Ghose and others, Appellants, 27th*

March, 1862.) If, however, the decree have not been executed, the party against whom it was obtained would still be entitled to collect rents, and therefore to obtain a decree for the same until the Civil decree was executed, though, of course, he would afterwards have to account for the rents to the decree-holder. (*Punchanan Bannerjee, Appellant, 27th March*, 1862.) In one case the Civil Court had set aside a Kabooliyat given to A. by B., and ordered B. to pay rent to C. A., who had not been a party to the civil case, subsequently sued C. for rent on this Kabooliyat. It was held that the Civil Court's decree barred A.'s claim, until he had established in the Civil Court a title superior to A. (*No.* 128 *of* 1861, *Anund Mohun Ghose and others, Appellants, 27th March*, 1862.) An intervener, who has been a party to the suit in the Lower Court, may appeal, and the appeal in all cases lies direct to the Judge. (*No.* 1178 *of* 1863, *Gopal Chunder Dass and another, Appellants, 10th September*, 1863.) This decision is the more important, as it supersedes the previous precedents on the same subject. *Bhagavatee Devya, Appellant, 1st October*, 1861, *and Prannath Roy Chowdhry, Appellant, 5th December*, 1861.

Something similar to the case of an intervener is where the purchaser of a transferable under-tenure sought to defend a suit brought against the vendor for arrears said to have accrued before the date of sale. He was held to have the right to do so, even though he had not registered the transfer, because the tenure would be imperilled if those arrears were proved. (*Siva Narain Bhattacharjya, Appellant, 5th December*, 1861).

Limitation.

The period of limitation to suits for arrears of rent is three years from the last day of the Bengal year, or from the last day of the month of Jeyt of the Fusly or Willaity year in which

the arrear claimed shall have become due. It will thus be obvious that a claim for rent for four years might be made in one suit. In some districts the last kist or instalment of any year is payable before the expiry of the year, so that a suit might be brought within the fourth year for arrears of that year and the three preceding ones. If, however, the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under Section 13, and the enhancement not having been confirmed by any competent Court, the suit must be instituted within three months from the end of the year as above, on account of which such enhanced rent is claimed. For all arrears due at the *passing* of the Act, suits were to be brought within three years of the passing of the Act, or within the period then allowed for the institution of such suits in the Civil Courts, whichever might first expire; and the time of the "passing of this Act" was ruled to mean the 29th April, 1859, the date on which the Act received the assent of the Governor General, not the 1st August, 1859, the date on which it came into operation. (*No.* 151 *of* 1863, *Baboo Luchmeeput Singh, Appellant,* 25*th August,* 1863). (*No.* 452 *of* 1863, *Mr. Moran, Appellant,* 15*th January,* 1864). (*No.* 940 *of* 1862, *Belasmonee and others, Appellants,* 8*th April,* 1863).

Appeals.

In ordinary rent cases, the appeal lies from the decision of a Deputy Collector to the Collector, when the amount sued for does not exceed 100 rupees. Such cases, when decided by the Collector in the first instance, cannot be appealed, the decision of the Collector being final. This officer may, however, order a rehearing within thirty days, upon the ground of the discovery of new evidence or matter material to the issue of the case. (*See postea*). In all cases, wherein

the amount sued for exceeds 100 rupees, whether decided by a Collector or Deputy Collector, the appeal lies to the Judge; but if it exceed 5,000 rupees, the appeal lies direct to the High Court. In all cases wherein a question of right to enhance or otherwise vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land is involved, the appeal from the judgment of the Collector or Deputy Collector lies to the Judge, whatever be the amount sued for. All enhancement cases are, therefore, appealable to the Judge direct.

CHAPTER VI.

Of Suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled, under Clause 5, *Section* 23, *Act X. of* 1859.

The suits brought under the above Clause must be carefully distinguished from applications made under Section 25. These applications are made when assistance is required to eject any cultivator *not having a right of occupancy,* or to eject any farmer or other tenant *holding only for a limited period,* after the determination of his lease or tenancy. A plaintiff proceeding under Section 25 *denies that the ryot or farmer has any right to* continue in possession, either because there is no right of occupancy, or because the term of the lease has expired, and he prays the Court to assist him in ejecting a party who keeps

possession without a title. But the plaintiff, who sues under Clause 5, Section 23, admits that the ryot or farmer has a right or title to possession by having a right of occupancy or by holding on an unexpired lease, and he prays the Court to cancel that right or title and declare it null and void. His grounds of action are twofold—1*st*, either non-payment of arrears of rent; or 2*nd*, breach of contract, of which in order.

Non-payment of arrears as a ground of ejectment.

When an arrear of rent remains due from any ryot at the end of the Bengal year, or at the end of the month of Jeyt of the Fusly or Willaity year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due, (Section 21); and when an arrear of rent shall be adjudged to be due from any farmer or other leaseholder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled and the leaseholder to be ejected. (Section 22.) But no lease is to be cancelled, nor is any leaseholder or ryot, having a right of occupancy or holding under an unexpired pottah, to be ejected otherwise than in execution of a decree or order under the provisions of Act X. Any person desiring to eject a ryot or to cancel a lease on account of the non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In *all* cases of suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit be paid into Court *within fifteen days* from the date of the decree, execution shall be stayed, (Section 78). These three

Sections must be taken together; and those parties only can be ejected under Section 78, who come within the purview of Sections 21 and 22. Persons having a permanent or transferable interest do not come under those Sections. A decree-holder must realize his dues from such persons, under Section 105, by the sale of the tenure, and, if that does not satisfy the decree, by the sale of any other property, moveable or immoveable, belonging to the debtor. (*No.* 262 *of* 1860, *Nundloll Ghose and others, Appellants,* 31*st December,* 1861. (*Ram Kishen Dass, Appellant,* 26*th March,* 1862.)

It will be observed that there is a difference between the arrears subjecting a ryot and those subjecting a farmer to ejectment. The ryot can be ejected ony for arrears due at the end of the agricultural year. He is not liable thereto for arrears due in the middle of the year, or even for the non-payment of rent of the first 10 months of the year, (*No.* 443 *of* 1862, *Mr. Robert Savi, Junior, Appellant,* 13*th March,* 1863). (*No.* 261 *of* 1863, *Ramjeebun Dass, Appellant,* 5*th August,* 1863). A farmer may, however, be ejected for arrears accruing at any time during the year. A landlord cannot, moreover, eject a ryot for arrears of any year, if he have received the rent of a subsequent year. Such receipt of subsequent rent acts as a waiver of the right to eject. (*No.* 39 *of* 1863, *Sheik Peer Bux, Appellant,* 28*th July,* 1862). And similarly the receipt of a portion of the rent for any year will bar ejectment till the end of that year. (*No.* 436 *of* 1862, *Madhur Khan, Appellant,* 27*th March,* 1863). A Zemindar cannot eject a ryot under Section 71, if a third party, alleging himself to be the transferee of the right of the tenant against whom the decree for arrears has been obtained, pay in the amount of such decree. (*No.* 1445 *of* 1862, *Saroda Persad Roy Chowdry, Appellant,* 13*th April,* 1863.) Ejectment can be sued for even in the case of an under-tenure

saleable under Section 105 of Act X., if the lease contain the condition that in case of non-payment of rent, the *status* of tenant shall cease. (*No.* 1443 *of* 1862, *Joydoorga Debea and others, Appellants,* 13*th April,* 1863). If a lease provide that, in case of default of payment of rent, the lessor is to have the power of re-entry, without expressly mentioning the mode of effecting it, the lessor is bound to exercise this power according to the provisions of Section 22. But the parties may contract that there shall be a power of re-entry without applying to any Court. (*No.* 119 *of* 1862, *Mr. R. Solano, Appellant,* 23*rd December,* 1862). A suit for arrears of house-rent and for ejectment of the tenant from the house is not cognizable under Act X. for reasons given in the preceding Chapter. (*Nawab Haji Mahomed Khan Kuzalbash, Appellant,* 28*th June* 1862). An auction purchaser, under Act XI. of 1859, cannot eject a ryot having a right of occupancy, otherwise than under the law in force. (*Dabee Bhoggut and another, Appellants,* 12*th July,* 1864.

Breach of the conditions of contract as a ground of ejectment.

The leading cases on this point are:—(*No.* 506 *of* 1862, *Gooroopersad Sirkar, Appellant,* 19*th March,* 1863), and (*No.* 402 *of* 1863, *Alum Chunder Shaw Chowdry and others, Appellants,* 22*nd March,* 1864). I would recommend a reference to these cases as reported, it being impossible to set them before the reader in all their bearings in a Work of this kind. The principle laid down in the above cases seems to be that a suit for ejectment will not lie on the ground that *some* breach of stipulation has taken place. There must be a stipulation that the tenant will be liable to ejectment for such breach, otherwise ejectment cannot be sued for, though damages might be sought in a Civil Court. A tenant who holds on after the expiry of a

lease without any fresh agreement, is bound by the terms of that lease. A condition of ejectment contained therein may, therefore, be enforced. (*No.* 2052 *of* 1862, *Sheik Evayetoolah and others, Appellants, 5th April,* 1861). (*Hari Prosonno Rai, Appellant, 31st December,* 1861). Ejectment is not illegal because it took place before the party ousting had obtained a lease from Government. (*No.* 370 *of* 1862, *Mr. Robert Morell and others, Appellants, 3rd December,* 1862). A suit to eject a Ghatwal cannot be brought under Act X., because such a case involves the question of title to the lands, which cannot be decided in a Revenue Court. (*Nos.* 451-459 *of* 1861, *Government, Appellant, 16th December,* 1863).

Intervener.

There is no necessity for investigating the claim of an intervener in a suit for ejectment, as a third party could not be evicted by a decree passed against the defendant. (*No.* 526 *of* 1862, *Sheik Salem, Appellant, 20th March,* 1863).

Form of plaint.

The plaint in this class of suits shall describe, as circumstances may require, the extent, situation, and designation of the land, farm, or tenure; and if necessary for the identification of the land, shall set forth the boundaries of such land. (Section 41).

Mode of execution of decrees.

If the decree be for the ejectment of any ryot from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy. (Section 12.) This is generally done by a bamboo stuck up in the centre of the field. In case of opposition, the Magistrate, on the application of the Collector, will give effect to the order for possession. (Section 12.) If the

decree be for the cancelment of any lease or the ejectment of any farmer or other person not being an actual cultivator, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum, or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure. (Section 83.) In the latter case, it will be observed, the law contains no provision for an application to the Magistrate in case of opposition.

Limitation.

The law containing no special provision of limitation applicable to this class of suits, the period of one year from the date of the cause of action accruing, must be held to be the time within which ejectment must be sued for. The application of this rule; to cases, where ejectment is sued for on the ground of breach of contract, is easy. Where it is sued for on the ground of non-payment of arrears, should a year have elapsed from the non-payment of certain arrears, and the rent of this year also not have been paid, the case will present no difficulty, whether the tenant be a ryot or a farmer. But if rent have been paid during this year, the matter is more complicated. I have pointed out above how far subsequent receipt of rent will act as a bar to ejectment in the case of a ryot. In the case of a farmer, I apprehend that subsequent payments should be very clearly shown to be made in liquidation of subsequent instalments, if a landlord having refused to accept payment of the lapsed instalment sought to eject. If any portion of the rent remained due at the time of bringing the action, the farmer would be equally liable to ejectment, whether the arrear was a former or a recent instalment, and as the ejectment cannot take place, if the defaulter be able to pay the amount of the decree for arrears with interest and costs,

the ejectment, in this case, can only take place from sheer inability to pay. The point, therefore, whether a subsequent payment in the case of a farmer will bar ejectment, is not likely to be raised, as ejectment only takes place from inability to pay; and it matters not whether it be to pay the last kist or a previous one. In the case of a ryot, he might have paid part of this year's rent, and be unable to pay what was due for last year, yet the ruling above would protect him from ejectment.

Appeals.

The regular appeal lies from the judgment of the Collector or Deputy Collector direct to the Judge, whether the suit be for ejectment only, or for arrears coupled with ejectment. *(Chatradhanee Singh, Appellant, 26th May,* 1862); (*Kalachand Chuckerbuttee, Appellant, 26th June,* 1862) ; and *No.* 2811 *of* 1863, *Kalleebur Opadyah, Appellant, 22nd June,* 1864.

CHAPTER VII.

Of Suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, under Clause 6, *Section* 23, *Act X. of* 1859.

The tyro will observe that the words "person entitled to receive rent for the same," limit this class of suits to those between whom the relation of landlord and tenant exists. If a ryot, farmer, or tenant be ejected by any other party than that entitled to the rent, his remedy will be only in the Civil Court. In *No.* 721 *of* 1862, *Robert Watson & Co.*,

Appellants, 13*th March,* 1863, it was expressly laid down that a party evicted by another from whom the land is not held by the former as a tenant or farmer, cannot sue for possession under Act X., but must go to the Civil Court. And again in *No.* 1586 *of* 1863, *Kooroonamee Dasee, Appellant,* 17*th February,* 1864, the dispossessors not being zemindars or superior holders, it was ruled that there is no jurisdiction under Act X.

Plaint.

If the suit be for the recovery of the occupancy or possession of any land, farm, or tenure, the statement of claim shall describe (as circumstances may require) the extent, situation, and designation of the same; and if necessary for the identification of the land, shall set forth the boundaries of such land, (Section 41).

Mesne profits.

A suit to recover possession of land, if mesne profits (wasilat) be also claimed, may be brought in the Civil Courts notwithstanding Section 23 (Clause 6) of Act X. (*No.* 787 *of* 1863, *Ram Lochun Dass, Appellant,* 8*th January,* 1864). But mesne profits cannot be recovered under Clause 6, Section 23 of Act X. A party must sue in the Civil Court. (*No.* 1768 *of* 1861, *Ruttan Monee Dasee, Appellant,* 13*th February,* 1863). I mentioned above that the Chief Justice has recommended a change in the law on this point.

Grounds of suit, &c.

The plaintiff must have been *illegally* ejected. In the case of the ryots and farmers discussed in the last Chapter, they would be illegally ejected, if ejected otherwise than in execution of a decree or order under the provisions of Act X. (*See* latter part of Sections 21 and 22). The plaintiff must, however, shew that he has some right to be reinstated, some right of possession. (*No.* 436 *of* 1863, *Madhur Khan, Appellant,* 27*th*

March 1863.) And again, in *No.* 2199 *of* 1863, *Sheo Ruthun Singh and others, Appellants,* 11*th May* 1864, it was very clearly laid down, that "in a suit for possession, the plaintiff must establish that he was *illegally* ejected from his tenure. If he was a tenant not having a right of occupancy and the term had expired, the landlord, had a right to the property, provided he used no improper means to obtain it. The mere fact that the plaintiff no longer possesses what he once possessed, is insufficient to shew that he was illegally ejected." In *No.* 471 *of* 1862, *Messrs. Robert Watson & Co., Appellants,* 10*th April,* 1863, it was pointed out that the words "occupancy or possession" in the clause at the head of this Chapter, have nothing to do with the words "right of occupancy" in Section 6, and the case was remanded to try whether the plaintiff had a right to recover possession of the land in dispute, and whether the relation of landlord and tenant existed.

A suit for possession of a jote by a person alleging himself to be the heir of the ryot evicted by the Zemindar, who denies his title, is not cognizable in the Revenue Court, as the Collector cannot try a question of heirship. (*No.* 1478 *of* 1862, *Hurry Churn Luskar, Appellant,* 14*th April,* 1863). But a suit for possession will lie against the Zemindar by the purchaser of a ryot's jote, if the Zemindar refuse to permit the entry of the purchaser, when, by local custom, the jote is saleable. (*No.* 1830 *of* 1863, *Degumburree Dabea and another, Appellants,* 10*th June,* 1864.

A suit for possession will lie by a farmer, when the cultivators on the farm have been disturbed or dispossessed; for this is in effect ejecting or disturbing in the receipt of the rent, the farmer to whom they pay their rent. (*No.* 1973 *of* 1863, *Sungut Mohto, Appellant,* 23*rd April,* 1864). A suit will lie by a tenant to settle the question of right to

possession and obtain a confirmation of possession, when such right is denied by the landlord. (*No.* 2916 *of* 1863, *Gooroo Churn Coomar, Appellant, 7th June,* 1864). A. is ousted by B., who states that he has got a lease from C., A.'s Zemindar. Notwithstanding such allegation, or even the Zemindar's subsequent ratification of it, the Civil Court has jurisdiction. (*No.* 292, *of* 1863 *Makbut Hossein and others, Appellants, 27th June,* 1864), and *No.* 2846 *of* 1863, *Joy Kisser Mookerjee, Appellant, 27th June,* 1864).—

Proper issues in certain cases.

In a suit for possession by a ryot, whose tenancy is not disputed by the landlord, the proper issue is, whether the ryot was illegally ejected or not, and not whether he had a right of occupancy or not. (*No.* 2879 *of* 1863, *Mussamut Taj Beebee, Appellant, 23rd June,* 1864). But where the defendant does not plead a right to dispossess, but denies plaintiff's possession, the sole issue is, whether or not plaintiff had been in possession, and had been dispossessed. (*Chunder Shekur Deb Roykut, Appellant, 8th July,* 1864.) In *No.* 2376 *of* 1863, *Sreemutthee Luksee Dabea Chowdrain, Appellant, 25th April,* 1864, it was laid down that a ryot ousted by order of a Magistrate, under Section 318, Act XXV. of 1861, is not bound in a suit for possession to notice that order or sue for its reversal; nor will any period of limitation commence to run against him from the date of that order. Section 318 with the accompanying Section of the same Chapter superseded the old Act IV. of 1840, awards under which were subject to the three years law of limitation contained in Clause 7, Section 1, Act XIV. of 1859. The importance of the above ruling, therefore, is deserving of notice.

If a ryot, who had been illegally evicted, again recovered possession, though his possession had been interrupted, his

holding would have continued during the period of illegal oustment. (*No.* 202 *of* 1862, *Summary Appeals, Luteefunnissa Beebee, Petitioner, 26th March,* 1863).

Intervener.

An intervener cannot be heard in a suit by a tenant to recover possession. (*No.* 385 *of* 1863, *Addapersad Chuckerbutty, Intervener, Appellant,* 11*th August,* 1863). *See also (Karuna Kanth Chowdry, Appellant,* 15*th July,* 1863).

Execution of decree.

A decree for the reinstatement of any ryot in the occupancy of land from which he has been ejected, or for the reinstatement of any farmer or other person (not being an actual cultivator) in the possession of a farm or tenure from which he has been ejected, is executed in the same manner as a decree for ejectment, (for which see last Chapter), Sections 82-83).

Limitation.

The period of limitation for suits for possession is one year from the date of the accruing of the cause of action, (Section 31).

Appeals.

The regular appeal from the judgment of the Collector or Deputy Collector lies to the Judge. This class of suits is not included in Section 153 among those in which the Collector's decision is final, when the amount is under 100 rupees, and in which an appeal lies, from the judgment of the Deputy Collector, to the Collector by Section 155. Moreover, there is some title to, or interest in, the land involved in the suit. Section 160 therefore applies.

CHAPTER VIII.

Of suits arising out of the exercise of the power of distraint conferred on Zemindars and others by Sections 112 *and* 114 *of Act X, or out of any acts done under color of the exercise of the said power, as particularly provided in the Act, under Clause* 7, *Section* 23, *Act X. of* 1852.

Section 112 of Act X. lays down that the produce of the land is held to be hypothecated or pledged for the rent payable in respect thereof; and when an arrear of rent, as defined in Section 20, is due from *any cultivator of land,* the zemindàr, lakhirajdàr, farmer, dependant Talookdar, under-tenant, or other person *entitled to receive rent immediately from such cultivator,* instead of bringing a suit for the arrear, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due.) The power of distraint may be exercised directly by the above persons and by Managers under the Court of Wards, Surburakars and Tehsildars of estates held under Khas management, and by other persons lawfully entrusted with the charge of landed property; 2*nd,* by Naibs, Gomashtahs, and other agents employed by class in the collection of the rents, if expressly authorized by power of attorney to distrain (Section 114); and 3*rd,* by a servant or other person, who shall have received a written authority (which may be on plain paper) from any of the persons included in classes 1st and 2nd (Section 20.) In the case of class *three,* the distress will be made *in the name and on the responsibility* of the person giving the written authority. In the case of class *two,* if any illegal act is committed, the principal employing the Naib, Gomashtah, or other agent,

Who may distrain.

will be jointly liable with the agent in a suit for damages. In *No.* 1855 *of* 1861, *Kali Mohun Roy Chowdry, Appellant,* 13*th February,* 1863, it was laid down that a Naib or Gomashtah must have an express power of attorney or authority to distrain, and cannot do so upon his general powers. If he do so without a special authority, he alone will be liable for damages, and to the punishment of Criminal Trespass under the Penal Code; but if the Zemindar receive the proceeds or otherwise ratify the act, he should also be made liable for damages. A sharer in a joint undivided (Ijmalee) estate cannot distrain otherwise than through a manager authorized to collect the rents on behalf of all the sharers, (Section 112).

In what cases distraint is prohibited.

When a cultivator has given security for the payment of his rent for certain land, the produce of this land is not liable to distraint. An arrear which has been due for a longer period than one year cannot be distrained for; nor can distraint be made for the recovery of any sums in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess have been executed by the cultivator. (Section 113.) Distraint also cannot be made of the produce of land other than that in respect of which the arrear is due. (Section 115).

What may be distrained.

Standing crops and other ungathered products of the earth, and crops or other products, when reaped or gathered and deposited in any threshing-floor or place for treading out grain, or the like, whether in the field or within a homestead, may be distrained. No grain or other produce, after it has been stored by the cultivator, and *no other property whatsoever* shall be liable to distraint. (Section 115).

Care of distrained property.

The cultivator may, notwithstanding the distraint, reap and gather the crops and store them in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainor may have them reaped or gathered and stored either in the above places or in some other convenient place in the neighbourhood. In either case, the distrained property shall be placed in the charge of some person appointed by the distrainor for that purpose. Crops or products which, from their nature, do not admit of being stored, may be sold before they are cut or gathered; but in such case the distraint shall be made at *least twenty days* before the time when the crops or products or any part of them would be fit for cutting or gathering. (Section 110).

Forms to be observed.

Before or at the time when distraint is made, the distrainor shall cause the defaulter to be served with *a written demand* for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. Service is to be made on the defaulter personally; if he abscond or conceal himself, the demand and account may be affixed at his usual place of residence. (Section 116). If the amount claimed be not immediately paid, property may be distrained to the value of this amount with costs of distress. *A list or description of the distrained property* is to be prepared, and a copy thereof delivered to the cultivator, or affixed, if he be absent, at his usual place of abode. (Section 117.)

Payment after distraint.

At any time after distraint and before sale, if the owner tender payment of the arrear claimed, and the expenses of the distress, the distrainor shall receive the same and withdraw the distress. (Section 121).

Application for sale, and consequent procedure.

Within *five days* from the time of storing the distrained crops or products, or if they do not, from their nature, admit of being stored within *five days* from the time of making the distress, the distrainor shall apply for sale of the same to the Civil Court Ameen, or other officer appointed for the purpose. (Section 122). *This application must be in writing and must contain* an inventory or description of the property distrained, the name and abode of the defaulter, the amount due, the date of distress, and the place in which the distrained property is deposited. (Section 123). Immediately on receipt of this application, the Civil Court Ameen or other Officer *shall send a copy of it to the Collector and shall serve a notice* (the cost of service of which is to be lodged by the distrainor, Section 123) on the cultivator, requiring him to pay the amount demanded or *institute a suit* to contest the demand before the Collector *within fifteen days*. A *proclamation* containing a description of the property, the demand for which it is to be sold, and the place of sale, together with the *date of sale, which shall not be less than twenty days from the date of application* shall, one copy, be sent to the Collector to be posted in his office, and a second copy be delivered to the peon charged with the service of the notice, for the purpose of being posted in the place where the distrained property is deposited. (Section 124). On the expiry of the period mentioned in the above proclamation, if no suit to contest the demand have been instituted, and if the demand have not been paid, the Civil Court Ameen or other officer shall proceed to make the sale (Section 128) by public auction in one or more lots, as the officer holding the sale may think advisable, at the place where the distrained property is deposited or at the nearest gunge, bazar, haut, or other place of public resort.

If the demand, with costs, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder. (Section 123).

Postponement of sale.

If, on the property being put up for sale, a fair price in the estimation of the officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf *apply to have the sale postponed* until the next day or next market day, (if a market be held at the place of sale,) the sale shall be postponed until such day, and shall be then completed at whatever price may be offered for the property. (Section 130).

Payment of purchase-money, and appropriation of same.

The price of every lot shall be paid for *in ready money at the time of sale*, or as soon after as the officer holding the sale shall think necessary; and in default of such payment, the property shall be put up again and sold. When the purchase money has been paid, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid. (Section 131). From the proceeds of the sale, one anna in the rupee is to be deducted on account of costs of the sale, and to be transmitted to the Collector for the purpose of being credited to Government. The distrainor will then receive the amount of the arrear with interest to date of sale, together with the expenses of the distress and of the issue of the notice and proclamation of sale. The balance, if any, shall be handed over to the person whose property has been distrained. (Section 132). Officers holding sales and all persons employed by, or subordinate to, such officers are prohibited from purchasing, either directly or indirectly, property sold by

Officers holding sales prohibited from purchasing. Penalty for doing so.

such officers. (Section 133). The penalty for violation of this Section is, under Section 169 of the Penal Code, simple imprisonment for a term which may extend to two years or fine, or both, and the property, if purchased, will be confiscated. As under Section 2 of the Penal Code—"every person shall be liable to punishment under that Code and not otherwise"—the offence must be sent to a Magistrate to be dealt with.

Irregularities in conducting the distraint.

The Civil Court Ameen or other officer is required to bring to the notice of the Collector any material irregularities committed by distrainors under color of the Act; and if in any case, on proceeding to hold a sale, he find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, who shall direct the issue of another notice and proclamation of sale, or pass such order as he may think fit. (Section 134). If the Civil Court Ameen or other officer proceed to the spot and no sale take place for the above reason, or because the demand of the distrainor has been previously satisfied, no intimation having been given, the charge of one anna in the rupee shall be leviable on the estimated value of the distrained property. If the distrainor's demand be not satisfied till the day fixed for sale, this charge shall be paid by the owner of the property, and may be recovered by sale of a portion of the property. In every other case it shall be paid by the distrainor, and may be recovered by attachment and sale of the property of the distrainor under the warrant of the Collector. But in no case shall a larger amount than *ten rupees* be recoverable on this account. (Section 135).

The one anna in the rupee, when no sale takes place.

All proceedings of the Civil Court Ameen or other officer are declared subject to the revision and orders of the Collector, who may, with the sanction of the Board of Revenue, require the submission of such periodical reports and statement of business performed as may be thought necessary. (Section 136).

Proceedings of Civil Court Ameens subject to revision, &c.

Having given an outline of the process of distraint, I now come to the suits arising out of the exercise of the power of distraint, or out of any acts done under color of the exercise of this power. These suits are of seven kinds:—

Suits arising out of the exercise of the power of distraint.

I. Suits to contest the demand of the distrainor. (Section 126).

II. Suits against the distrainor by persons claiming the property distrained as theirs. (Section 139).

III. Suits by interveners, who claim to be actually and in good faith in the receipt and enjoyment of the rent of the land. (Section 140).

IV. Suits for damages by persons prevented from suing in time to save their property from sale. (Section 141).

V. Suits for damages by persons aggrieved by the illegal act or negligence of the distrainor. (Section 142).

VI. Suits for damages for unlawful distraint by persons not empowered to distrain. (Section 143).

VII. Suits for resistance of distraint. (Section 145).

And now of these in order:—

I. When the cultivator has received the notice directing him, if he dispute the demand, to institute a suit within fifteen days, if a suit be instituted before the Collector in pursuance of such notice, the Collector shall transmit to the Civil Court

Suits to contest distrainor's demand.

Ameen or other Officer, or, *if so requested*, shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by, or presented to, the Civil Court Ameen or other Officer, he shall suspend proceedings in regard to the sale of the distrained property. (Section 125). A suit may be instituted to contest the distrainor's demand immediately after the distraint and before the issue of notice of sale. The Collector shall proceed as in the above case; and if an application for sale be made to the Civil Court Ameen, he will forward a copy of such application to the Collector and suspend proceedings, pending the decision of the case. (Section 126).

Withdrawal of distress on security being given.

The owner of the property may, at the time of instituting the suit or at any subsequent period, execute a bond with security, binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit. A certificate of this being presented to the distrainor by the cultivator, or being served on him by order of the Collector, the property shall be released from distraint. (Section 127). In all suits instituted to contest the demand of the distrainor, the latter shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount. The precedents given in Chapter V. will therefore, many of them, be applicable here. If the demand or any part thereof be found to be due, the Collector shall make a decree for the amount in favour of the distrainor, and the amount may be recovered by sale of the property, if the distress has not been withdrawn. If any balance remain due after such sale, execution may be taken out against the person and any other property of the defaulter. Should the distrained property

Adjudication.

have been released on security, the decree may be executed against the person and property of the defaulter and of his surety. If the distraint be adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favor of the plaintiff ryot as the circumstances of the case may seem to require. (Section 138). If the distrainor obtain a decree, and the property have not been released, the Collector shall issue an order to the Civil Court Ameen or other Officer, authorizing the sale of the property, and on the *application of the distrainor*, which shall be made *within five days* from the receipt of the above order by the Civil Court Ameen, a proclamation of sale shall be published in the manner before prescribed, fixing another day for the sale of the distrained property, which shall *not be less than five* nor *more than ten days* from the date of the proclamation. Unless the amount adjudged due with the costs of distress be paid, the sale will take place in manner described above.

Damages.

Sale, if arrear be proved.

In the case of *Khuda Bux, Appellant*, 12*th June*, 1862, a cultivator sued to contest the distrainor's demand, alleging that his rent was Rs. 24 and not Rs. 112. It was held that the burden of proof was on him; and as he failed to prove this allegation, the defendant distrainor's evidence was not gone into, and the suit was dismissed. This was a ruling of the late Sudder Court. It is evident that, had the distrainor sued for arrears, the burden of proof would have been on him. This precedent therefore seems to militate against the words of Section 138, where it is laid down that the distrainor must prove the arrear in the same manner as if he had himself brought a suit for the amount. The point has not been raised before the High Court as yet that I am aware of.

II. If any person *shall claim as his own, property which has been distrained* for arrears of rent alleged to be due from any other person, he may institute a suit *against the distrainor and such other person* to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him, may institute a suit to contest the demand. On the institution of such a suit, the property may be released on security. If the claim be dismissed, the Collector shall make an order for the sale of the property or the recovery of its value, as the case may be, for the benefit of the distrainor. The law contains no provision for awarding damages against a person who makes a vexatious or groundless claim to property. If the claim be upheld, the Collector shall decree the release of the distrained property with costs and such damages (if any) as the circumstances of the case may require. *No claim in respect of a previous sale, mortgage, or otherwise shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.* (Section 139.) It will be observed that there is no limit mentioned *as* to the amount of rent to which the landlord's prior claim holds good. Under English law it is restricted to *one year's rent;* and this analogy holds good, as the Indian landlord cannot distrain for any arrear which has been due for a longer period than one year, (Section 113.) An English landlord may distrain for six years' arrears of rent, if the relation of landlord and tenant continues.

Suits against the distrainor by parties claiming the distrained property.

Suits by Interveners.

III. If in any case in which property has been distrained for an arrear of rent, *and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed* by or on behalf of any person other than the distrainor, on the ground of such other person being actually and in good faith *in the receipt and enjoyment of the rent* of the land, such other person shall be made a party to the suit, and *the question of the actual receipt and enjoyment of the rent* by such other person before and up to the time of the commencement of the suit shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within *one year* from the date of the decision. (Section 140). This is a provision analogous to that contained in Section 77, and the period of limitation for the civil suit is the same in both Sections. I may notice that the wording of the above Section, *and a suit has been instituted,* precludes an intervener in a case of distraint from suing, unless the cultivator have instituted a suit to contest the distrainor's demand. If a cultivator who should pay his rent to A., lets B. distrain and sell his property without instituting a suit to contest B.'s demand, the loss will be his own.

One of the greatest sources of feud between rival and adjacent zemindars is often the rents of some intermediate land claimed by both. Neither party wishes to incur the expense of a civil suit to settle the matter. The one who is in the right says, "why should I be put to needless expense?" and the one who is in the wrong will not litigate, because he has all to gain and nothing to lose by abstaining from litigation and resorting to force. Now the provisions as to inter-

veners contained in Sections 77 and 140 of Act X., and the one year's limitation afford a very simple course to him who has the right on his side of maintaining his right or forcing his adversary to bring a civil suit. If, as I think he can, the Collector or Deputy Collector can of his own motion make an intervener a party to a suit, a zemindar who tries to collect rents to which he has no right, could easily be forced to prove or forego his pretensions, by a process attended with very little expense to the rightful landlord. Tending to the same point is a very important decision, No. 1978 *of* 1863, *Sungut Mahto, Appellant,* 23*rd April,* 1864, when a farmer and his lessor are the contending parties, not for the rents of any portions of land, but about collections in general, the latter using his influence as Malik to annoy his farmer or putneedar with whom he is at feud. As pointed out in Chapter VII., where this decision has been given, the farmer may sue his lessor for possession.

The precedents given in Chapter V. with respect to interveners, will also generally apply to suits under Section 140.

Suits for damages by persons prevented from suing in time to save their property from sale.

IV. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, *is prevented by any sufficient cause from bringing a suit to* contest the demand, or to try the right to the property, as the case may be, *within the period of fifteen days* from the receipt of the notice, he may nevertheless institute a suit under Act X. to recover damages for the illegal distress and sale of his property. (Section 141). The facts to be proved would be the same as under headings I. and II. In *No.* 1855 *of* 1861, *Kalee Mohun Roy Chowdry, Appellant,* 13*th February,* 1863, it was ruled that an Appellate Court may revise the amount of damages awarded by the Lower Court.

Suits for damages by persons aggrieved by the illegal or negligent act of the distrainor.

V. If any person empowered to distrain property or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of any arrear of rent alleged to be due, *otherwise than according to the provisions of Act X., or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainor not having taken proper precaution for the due keeping and preservation thereof; or if the distraint shall not immediately be withdrawn, when it is required to be withdrawn by any provision of Act X.*, the owner of the property may institute a suit under Act X. to recover damages for any injury which he may have thereby sustained. (Section 142). It will be sufficient to show that the act complained of was done by the defendants in exercising the powers of distraint conferred by the law. (*No.* 235 *of* 1862, *Nundaza and others, Appellants, 29th January,* 1863.) An action will lie by an under-tenant, upon whom a distress has been made for the rent of his lessor, the proceedings of the distraint not having been according to law. (*Ibid*).

Suits for damages for unlawful distraint by persons not empowered to distrain.

VI. If any person *not empowered to distrain property,* (under Sections 112 and 114) *nor employed for the purpose under a written authority,* by a person so empowered, shall distrain, or sell, or cause to be sold, any property under color of the Act, the owner of the property may institute a suit under the Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence, in addition to any damages which may be

awarded against him in such a suit. (Section 143). *See No.* 1855 *of* 1861, *Kalee Mohun Roy Chowdry, Appellant, 13th February*, 1863, *quoted above twice.* In order to bring a suit under this Section, the relation of landlord and tenant must exist between the parties. A suit could not be brought against an outsider, with whom such a relation did not exist. (*No.* 886 *of* 1864, *Raghû Nath Sahay and others, Appellants*, 26*th August*, 1864.)

Suits for resistance of distraint.

VII. Section 119 provides that if a distrainor shall be opposed or shall apprehend resistance and shall desire to obtain the assistance of a public officer, he may apply to the Collector, who may, if he think necessary, depute an officer to support the distrainor in making the distraint. The Board of Revenue, in Rule XV. (Circular No. 55, 26th August, 1863), have directed that, to support a distrainor legally, a single peon should be sent, who by his presence should give sanction to all legal proceedings on the part of the distrainor, and whose duty it would be to discountenance and report at once to the Collector any illegality that might come to his notice. The peon should not be empowered to use physical force. Under no circumstances is a Collector justified in sending to the assistance of a distrainor a number of peons whose only use can be to intimidate the ryots by an illegal display of physical force, and who become mere instruments of oppression in the distrainor's hands, and naturally obey his orders, whether they be legal or not.

Penalty for resistance of distraint.

If any person shall resist a distraint of property *duly made under Act X.*, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made *within fifteen days* from the date of such resistance or

removal, shall cause the person accused to be arrested, and if the offence be proved and *the offender be the owner of the property*, shall order him to be imprisoned in the civil jail for *six months*, or until the whole arrear due to the distrainor, with all expenses and costs, shall sooner be paid or levied by distress and sale of the property of the offender under Warrant of the Collector. *If the person convicted of the offence be any other than the owner* of the property, he shall make good to the distrainor the value of the same, and shall further be liable to a fine not exceeding one hundred rupees; or, in default of payment thereof, to imprisonment for a period not exceeding two months. (Section 149). Before Act VI. (B.C.) of 1862 was passed, there was no provision for the custody of a person arrested under the above Section until the case should be tried. Section 18 of that law provided that he should be brought before the Collector with all convenient speed, and the Collector should proceed forthwith to try the case. If the case cannot be at once heard and determined, the Collector may, if he think fit, require the person arrested to give security for his appearance whenever the same is required. In default of such security, the person arrested shall be committed to the civil jail till the case is heard.

Limitation.

The law of limitation for each of the above classes of suits, in order, is as follows :—

I. Fifteen days, (Section 124).

II. Fifteen days, (Sections 139 and 124).

III. Between the institution of the suit to contest the distrainor's demand and the decision of such suit, (Section 140).

IV. Three months from the date of occurrence of the cause of action, (Section 144).

V. Three months from the date of occurrence of the cause of action. (Section 144,)

VI. Ditto ditto.

VII. Fifteen days from the date of resistance or removal. (Section 145).

Appeals.

If the value of the property in dispute does not exceed 100 Rupees, the Regular Appeal from the decision of a Deputy Collector will lie to the Collector. The decision of the Collector in similar cases will not be subject to Appeal, if he try the case in the first instance. If the amount exceed 100 Rupees, the Regular Appeal from the decision of the Collector or Deputy Collector will lie to the Judge. (Sections 153 and 160).

CHAPTER IX.

Of suits by Zemindars and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession, under Section 24, *Act X. of* 1859.

Who may sue.

Zemindars and others in receipt of rent may sue. The *receipt of rent* is the test, and the rent must be rent of land.

Who may be sued.

Agents employed in the management of lands or the collection of the rents thereof, or the sureties of such agents may be sued.

No other agents can be sued under the above Section in the Collectorate Courts. An agent for the receipt and *custody of rents collected by others* and paid to him, must be sued in the Civil Court. (*No.* 246 *of* 1863, *Kunneeram Poorkha, Appellant,* 21*st September,* 1863.) See also (*No.* 261 *of* 1863, *Lolla Ruttun and others, Appellants,* 17*th February,* 1863). The sureties of an agent may be made co-defendants with him in the suit. If a surety should die, his heirs will be liable only if the terms of the surety bond expressly extend such liability to such heirs. (*No.* 301 *of* 1863, *Sreemuthee Ranee Moheema and Prankishto Mitter, Appellants,* 30*th April,* 1864). It will therefore be prudent to insert in the surety bond of an agent a clause so extending the liability.

Who may be sued for.

The subject of the suit may be money received or accounts kept or papers connected with the management of the land or the collection of the rents. It would be impossible here to describe, at large, all the accounts and papers connected with the management of land and the collection of rent. Those who wish to study the matter thoroughly, are referred to a most useful work entitled, "Zemindaree Accounts," by D. Carmichael-Smyth, Esquire, of the Bengal Civil Service. From this Work I extract the following list, giving briefly the meaning of each word :—

Chittahs.—Measurement papers containing an account of all the lands in the village, divided numerically into *dags* or shares. The quantity of land in each *dag,* the species of cultivation, and the name of the ryot to whom it belongs are given.

Gooshwarah.—An abstract of the Chittahs showing the gross amount of land included therein.

Cuteean.—Another abstract showing the quantity of land held by each ryot in each mehal, the *Chittahs* in which it is contained; the number, or *dag*, and the species of cultivation.

Ekwal.—Shows the gross amount of land in each mehal in each ryot's possession, with detail of the cultivation.

Cuteean Teridge.—Shows the total gross amount of land in each ryot's possession, and the details of cultivation.

Jumma-bundee.—Shows the quantity and quality of land, the rate, and the total rent of each ryot.

Towjee.—Is the detail of the kists or monthly instalments.

Tulub-bakee.—Account of demand, collections, and balance due by each ryot.

Kurcha-Hisab.—Account of total demand, total collections, and total balance due on the mehal or estate.

Jumma-Wasil-bakee.—Detailed account of the rent demandable, the rent collected, and the rent due from every ryot on the estate. A most important document.

Seeah or Seeaha.—Daily ledger or account book of receipts and disbursements.

Teridge-Jumma Kurcha.—An abstract of the *seeah*, which is generally submitted by the gomashtah to the zemindar at the close of the year.

The above are the names of all the accounts belonging to a most elaborate system, which in scarcely any part of Bengal is kept up in its entirety. The papers most commonly met with, and which most frequently form the subject of suits against agents, are the Chittahs, the Jumma-bundee, the Tulub-bakee, Jumma-Wasil-bakee, and Seeah.

Arrest before judgment.

As already pointed out in Chapter V., the plaintiff in a suit against an agent may, with his statement of claim, present an application for the issue of a warrant of arrest; and if, on exam-

ination of the plaintiff and inspection of the documents filed, there appear grounds for believing that the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant. The proceedings on this warrant have been already given in Chapter V. (*See* Section 49 of Act X). If the arrest appear to have been applied for without reasonable cause, damages to the extent of 100 Rupees may be awarded. (Section 53). If the defendant have been arrested and detained in jail or on security, and the case be decreed subsequently, he may then be detained or committed to the civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree. (Section 14). If he have given security for his appearance and be not present when judgment is pronounced, and the surety fail to produce him, execution may be taken out against the surety *for the sum due under the bond* in the same manner as if a decree for the sum had been passed against the surety. (Section 85). If defendant have not been arrested before judgment, execution will be taken out in the usual manner.

Execution of decree.

Suits may be brought at any time during the agency or within one year after the determination of the agency of the agent. In the case of claims existing at the time of the passing of the Act, one year from the passing of the Act or the period then allowed for the institution of suits in the Civil Court, whichever should first expire, was prescribed. As to the "passing of the Act," see above, in Chapter V., where it was ruled to mean the 29th April, 1859. If the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of money by the agent, or if any fraudulent account shall have been

Limitation.

rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person, but no such suit shall, in any case, (except the case of claims existing at the time of the passing of the Act) be brought at any time exceeding *three years* from the termination of the agency. (Section 33). In *No.* 1296 *of* 1862, *Chowdry Chutterpaul Singh and others, Appellants, 7th April,* 1863, it was thus laid down :—"After the expiration of one year, *a suit for an account* is barred, but if the agent deliver an account showing himself to be indebted, *a new cause of action* arises upon the admission by the settlement of account. An action for the balance on the account would probably be maintainable, not under Act X., but under the rules relating to ordinary civil suits, subject only to the limitation of Act XIV. of 1859. *If the account delivered be fraudulent,* the case falls within the proviso in Section 33 of Act X. of 1859, and a suit may be brought under that Act within one year from the date when the fraud shall have been first discovered by the plaintiff." If an agent be suspended, his agency will be held to terminate from the date of such suspension. (*No.* 2541 *of* 1862, *Muddun Mohun Roy, Appellant, 27th January,* 1864).

Appeals.

The regular appeal in cases tried by a Deputy Collector lies to the Collector, if the value of the suit do not exceed 100 Rupees. In these cases, if tried in the first instance by the Collector, there can be no appeal. If the amount in litigation exceed 100 Rupees, the appeal from the decision of the Collector or Deputy Collector will lie to the Judge.

CHAPTER X.

Of applications for assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period, after the determination of his lease or tenancy; or any agent after the determination of his agency; or to enforce any attachment or ejectment expressly authorized by any Regulation or Act under Section 25, *Act X. of* 1859.

I have already, in Chapter VI., pointed out the difference between the remedy there sought and that which can be sought under this Chapter. The proceeding under Section 25 is not a regular suit. It is only an application for aid to turn out a person, who, the plaintiff alleges, keeps possession without right or title. The questions that can be raised in issue, are :—" Has defendant a right of occupancy or not?" " Has the term of his lease expired or not?" If these points be decided against the defendant, the Collector will assist the plaintiff in ejecting him. What is generally done in practice is this.—The Collector gives a sort of ejectment decree, which, if necessary, is executed as any other decree. The person who makes an application under this Section ought always be prepared to show that he has asked defendant to quit, and defendant would not do so without ulterior measures. If the defendant be willing to quit, but have never been asked to do so, he should not be put to the expense of plaintiff's costs, the payment of which is a sort of penalty, to be inflicted only where a person has opposed the just right of another. If any other pleas be made than those of having a right of occupancy or holding on an unexpired lease, as, for instance, heirships, or the like, the suit cannot be dealt with in the Revenue Courts.

Assistance required.

The Collector has no jurisdiction in a suit for ejectment, under this Section, to interpret the terms of a deed of compromise made between the parties in a civil suit. (*Dusharatee Putnaik, Appellant, 28th June,* 1862). Instead of an application under this Section, a suit may be brought in the Civil Court. (*No.* 2313 *of* 1862, *Muddun Mohun Roy, Appellant,* 21*st August,* 1863). From the same decision I quote the following:—" An application to the Collector under Section 25 is not a suit, and the order of a Collector in such a case is not one from which an appeal lies to the Civil Court, but the application is a mere summary application to the Collector to give assistance under circumstances under which, according to the old law, the landlord might have ejected the tenant without resort to the Courts of Judicature. There was nothing in the old law to prevent the landlord from going to the Civil Court for redress, instead of taking the law into his own hands. In like manner, it is clear that Section 25 does not preclude the zemindar or other person from asserting his rights in the regular Civil Courts, instead of applying to the Collector for assistance. Section 23, Act X. of 1859 takes away the right of suing in any other Court than that of the Collector for causes of action made cognizable by the Collector; but Section 25 contains no such provision. If it had been intended to take away the right of suing in the Civil Courts, the provisions of Section 25 might have been incorporated with Section 23." Similarly, in *No.* 2892 *of* 1863, *Shib Persad Chuckerbutthee, Appellant, 9th June,* 1864, "if a tenant cease to pay rent, deny the landlord's title, and set up an adverse title, the landlord may regard him as a trespasser, and instead of proceeding under Act X., may sue to eject in the Civil Courts." It must not be supposed that a Zemindar is bound to apply in every

case for assistance under this Section. If he can *legally* eject without such assistance, he may do so. (*No.* 2199 *of* 1863, *Sheo Ruttuh Singh and others, Appellants,* 11*th May,* 1864.)

A zemindar, who has been put in possession under this Section, must be held for all purposes to be in the actual possession and enjoyment of the estate. (*Mohesh Chunder Paul Chowdry and others, Appellants,* 14*th June,* 1862.) I have already pointed out that a suit for possession will lie by a farmer when the cultivators on the farm have been disturbed or dispossessed, for this is in effect ejecting and disturbing in the receipt of the rent the farmer to whom they pay their rent. (*No.* 1973 *of* 1863, *Sungut Mohto Appellant,* 23*rd April,* 1864). By analogy, if a farmer after the expiry of his farming lease, or an agent after dismissal, interfered with the ryots to the annoyance of the proprietor, (such cases often happen), an application could be made to the Collector under this Section for summary ejectment. The briefness, rapidity, and expenselessness of this method would possess for the landlord many advantages over a civil suit for an Injunction. No application can be made under this Section for the ejectment of a farmer on the determination of a lease of the kind denominated ticca *zur-i-peshgee* or the like, in which an advance has been made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court. The reason is obvious; this is a kind of mortgage, and the enquiry that would be necessary would involve points beyond the jurisdiction of the Revenue Courts.

Exception.

Attachment or ejectment expressly authorized by any Regulation or Act.

The object of Section 25 is to take away from zemindars or others the right of doing for themselves what ought to be done through the instrumentality of a Court of Justice. Therefore, any attachment or ejectment which is expressly authorized by any Regulation or Act, must now, in case of opposition, be made with the assistance and by the authority of the Collector. An attachment of the kind referred to, is that which can be made by a zemindar of a Putnee Talook under Section 7, Regulation VIII. of 1819. For ejectments expressly authorized, see Section 37, Act XI. of 1859. (*Tenures voided by sale for arrears of revenue*).

Limitation

There is no special law of limitation laid down in any part of Act X. The one year's rule contained in Section 30, will therefore apply. The application for aid must consequently be made within one year after the expiry of the lease, or tenancy, or agency.

Appeal.

The regular appeal from the decision of a Deputy Collector lies to the Collector. (*No.* 1176 of 1860, *Chunder Koomar Mitter, Appellant,* 22*nd August,* 1861,) (*Section* 151). The appeal from the decision of the Collector lies to the Commissioner and not to the Judge. (*No.* 386 *of* 1860, *Meer Mahomed Tuckee Chowdry, Appellant,* 17*th June,* 1861.) (*C. J. Philip, Appellant,* 3*rd June,* 1863). In a case appealed regularly from a Deputy Collector to the Collector, no further special appeal will lie to the Commissioner. (*Section* 152).

CHAPTER XI.

Of Suits respecting measurement under Section 9, *Act VI. (B. C.) of* 1862, *also of Applications for measurement, under Section* 10, *Act VI. (B. C.) of* 1862.

Disputes about the measurement of land have certainly prevailed since the introduction of Act X. to a greater extent than before. There are several reasons for this, one of the most important of which is the progress of the country, which makes landlords, European and Native, as they become better acquainted with the value of land as a source of production, desirous of obtaining a correct record of their rights as affected by the extent and boundaries of their estates. Again, by the third Clause of Section 17, the quantity of land held by a ryot being in excess of the measurement for which he pays rent, is expressly stated to be a ground of enhancement. In all enhancement suits, moreover, a rate per Beegah or Kanee being fixed, the sum total of the rent cannot be calculated, till it be ascertained how much land the ryot has. For these reasons and others, the measurment of lands has of late years assumed more than former importance. The ryots, who have all to lose by a measurement, which, in most cases, shews them to be in possession of more land than they would admit, and from their natural aversion to have matters put on such a plain and clear footing as would obviate all chicanery, have always been strenuously opposed to all measurements. The Legislature found some difficulty in dealing with the matter, and the provisions first contained in Act X. were abrogated, as far as they related to Bengal, by Act VI. (B. C.) of 1862, in Sections 9, 10, and 11 of which are contained the present law on the subject for Bengal.

Who may measure.

Every proprietor of an estate or tenure, or other person *in receipt of the rents* of an estate or tenure is declared to have a right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, *unless restrained from doing so by express engagement with the occupants of the land.* I will take the case of a Zemindar, who had let a portion of his land in Putnee to a person, who in his turn let it out in Ijarah, or farm, to a farmer. Here, the Zemindar, as the proprietor of the estate; the Putneedar, as the proprietor of the Putnee tenure; and the farmer or Ijarahdar, as the person in receipt of the rents, has each by law a right to make a measurement of the lands, unless he has barred his own right by expressly stipulating with the occupants not to do so. The Zemindar in giving the Putnee lease might insert a clause barring the right of measurement; and the Putneedar might do the same in the farming lease; but if no such clause be inserted, the absence of a permissive clause to measure does not preclude the right, for the Law confers the right. It might even be a question, whether such a preventive clause would operate to bar the right conferred by the Law, although it might be made a ground of action to cancel the lease in consequence of breach of its conditions. A lessee, under the Court of Wards, has in accordance with the above been ruled entitled to make a general survey of the lands comprised in his lease, inasmuch as he is the person having the right to receive the rent. (*No.* 2533 *of* 1863, *Messrs. R. Watson & Co., Appellants, 7th July,* 1861.) So also the owner of a fractional share of an estate has full power to measure the same with a view of estimating his legitimate assets from the property, and of taking steps to realize the same. (*No.* 269 *of* 1861, *Shumbú Chandra Sadhú Khan, Appellant, 30th August,* 1861.)

Proceeding in case of opposition.

If any person intending to measure any land which he has a right to measure, is opposed in making such measurement by the occupant of the land; or if any under-tenant or ryot, having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement, refuses to attend and point out such land, such person may make application to the Collector, who shall thereupon proceed to inquire into the case in the manner provided for suits under Act X. of 1859, and shall pass a decision either allowing or disallowing the measurement; and, if the case so require, enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held in his absence. It is to be observed that the person making an application to the Collector, under Section 9, should be prepared to shew that he or his people went to measure and were opposed; or that the under-tenant or ryot received notice, verbal or written, and refused to attend and point out the land. When the application has been made and the Collector proceeds to enquire into the case, it will be evident from what has been said above that the only point at issue can be—"Has any express engagement been made with the occupants of the land, by which the right of measurement is barred?"

It is the common practice for a landlord to include in a single application a number of ryots in a mouzah or village. But I apprehend, as the application is of the nature of a plaint in a Civil suit, that a number of ryots between whom there is no legal privity, who do not hold their lands in coparceny and are not jointly responsible for each other's rents, cannot be joined in a single application. This amounts to

a misjoinder, and would render the case liable to be dismissed. Each ryot must be sued separately. The point has not, I believe, ever been raised in appeal before the High Court; but there can be little doubt about it, looking to general principles.

The ryots entertain a sort of idea that a measurement once made will be binding on them, and this accounts, in no slight degree, for their antipathy to its being made; but they should be informed that a measurement is only binding and not capable of being contested, 1*st*, when it is made under the sanction and direction of a competent Court, as when an Ameen is deputed by a Court to make a local enquiry, and both parties have an opportunity of calling and examining him as a witness; or 2*nd*, when it has been made in the absence of a party, who, after the Collector's order enjoining his attendance, has neglected to attend and point out the land, as stated above. The measurement made by a landlord is as open to disproof as any other evidence which can be produced by private parties. Of course, if a landlord produce measurement papers and prove them, and the ryot have nothing tangible to say, no proof to give, and content himself with merely denying their correctness, there will be an adequate amount of proof on one side *versus* no proof on the other side, and the landlord must succeed in the matter. But if the measurement be really erroneous by reason of an unfair measuring pole having been used, or from any other cause, it is capable of being proved so; and it would be the duty of a Court before which reasonable grounds for considering the measurement erroneous were advanced, to have a measurement made under its authority, if the objecting party were willing to deposit the costs of such measurement, to be charged subsequently to the party proved to be in the wrong. In fact, no measurement made by private parties for their

own information can be binding between them and their ryots, until the papers of the measurement have been filed, and either proved or let pass without challenge, in a case in which the quantity of land was a main issue between the same parties—after which they will become a *res adjudicata* between such parties. When ryots object to measurement papers and raise futile objections, it is well to ask them if they wish another measurement made and are willing to deposit the cost of it, to be charged to the landlord if he be proved in the wrong. This will stop objections which are only meant to retard the decision of the case, while the offer will be gladly accepted in most cases, if the ryot has a real hardship to complain of, when he knows that the landlord will have to pay the expense of the second measurement in the end.

When it cannot be ascertained who are the persons liable for the rent

The provisions of Section 9, which I have hitherto been discussing, apply only when the landlord is able to make a measurement by reason of being able to ascertain who are the occupiers of the land, and therefore liable for the rent. In this country the ryots of a village very often, if not always, have their lands on all sides of the village. The nature of the soil, and the different levels of the ground varying, make a great difference in the fecundity of the ground and its adaptability for certain crops. The best paddy grows where the ground is low and subject to inundation, while other crops, pepper for example, will not succeed except on ground which, though sufficiently irrigated, is yet not subject to be laid under water, which would destroy the entire crop. From time immemorial the custom has been, that each ryot should have a plot of each kind of land, or several plots according to the size of his holding. It sometimes happens that not two of these plots are

contiguous, and when each ryot thus holds land on every side of the village, it will easily be understood how difficult, if not utterly impossible, it would be to make a measurement and ascertain the rights and liabilities of each one of 200 or 300 ryots, if the Zemindar had no previous measurement papers, and the cultivators, making common cause, refused to point out the plots of land in the occupation of each individual. To meet a case of this sort Section X. was enacted, which provides as follows:—"If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, *by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands* or any part of the lands comprised therein, such proprietor or other person may petition the Collector in respect of the lands which he cannot measure as aforesaid, and the Collector thereupon and upon the necessary costs being deposited with him by the applicant, shall proceed to measure the land and to ascertain and record the names of the persons in occupation of the same; *or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable.* The provisions of Section 67 (as to witnesses, &c., of which hereafter) of Act X. of 1859 apply to any proceeding of the Collector instituted under this Section. If after due enquiry, the Collector shall be unable to measure the land or to ascertain or record the names of the persons in the occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons

having tenures or under-tenures in such lands or any part thereof, then and in any such case *he may declare the same to have lapsed to the party on whose petition he has made the enquiry.* If any person, within *fifteen days* after the Collector shall have recorded the name of such person as being in occupation of such land or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms or conditions as he may think proper, alter or rescind his declaration according to the justice of the case. Save as aforesaid, the decision of the Collector on all matters enquired into and determined by him under this or the last preceding Section, shall be final, unless the same shall be reversed on appeal therefrom to the Civil Court. Such appeals shall lie to the Zillah Judge or to the Sudder Court, subject to the provisions and conditions contained in Sections 160 and 161 of Act X. of 1859." The person making a petition under this Section, ought to be prepared to show that he had endeavoured to make the measurement, and was unable to do so by reason of being unable to ascertain who are the parties liable for the rent. It will be observed that there are two kinds of survey contemplated by the Section. By the first, the land is merely measured, and the names of the occupiers ascertained and recorded. In order to the second, *a special application* must be made by the proprietor or other person, and the tenures or under-tenures, the rates of rent payable, and the persons by whom they are payable will be ascertained, *determined*, and recorded. The proprietor or landlord has, under this Section, complete redress if his tenants oppose a measurement, or endeavour, by passive resistance, to prevent him from ascertaining his rights. These

rights will be ascertained, determined, and recorded by a competent Court, subject to an appeal as in civil cases; and if, after the case is brought into Court, this fraudulent opposition be continued, it will result in no benefit to those who practise it. As they will not come forward and show their rights, they will be presumed to have none, and the tenures will be declared to have lapsed. This order will be final, unless good grounds are shown for a review of judgment within fifteen days.

Pergunnah pole.

All measurements are to be made by the standard pole of measurement of the Pergunnah in which the land is situated. (Section 11.) If there is a dispute on this point, it will have to be determined what is the standard pole of the Pergunnah; and disputes very frequently occur as to this. In adjoining Pergunnahs the standard often differs widely. In some cases as where the land is wanted for indigo, it is the interest of the proprietor to use a long pole, and if he think himself justly entitled to do so, while the ryots dispute the matter, the point is one of considerable importance to both parties, which if not settled in Court will probably lead to disputes out of Court. In other cases, as where the land is let by the Beegah or Kanee, the shorter the pole, the greater the number of Beegahs or Kanees which will lie in the same area; and so the higher will be the rent. Each case of this kind must be dealt with on its own merits. Not unfrequently proceedings connected with old Resumptions or Settlements, to be found in the Collectorate Sherishtehs, furnish the standard of the Pergunnah. In no case is the Pergunnah standard a point that can be disposed of in a summary way. It must be authoritatively ascertained by judicial enquiry, if necessary. (*No.* 343 *of* 1864, *Hori Mohun Mooherjee, Appellant,* 10*th August,* 1864).

(*No.* 924 *of* 1864, *Romesh Churrun Dutt, Appellant,* 19*th August,* 1864.) Why should not, however, the Government Standard Beegah be made to supersede all local customs? The subsequent advantage to be gained by all parties would soon outweigh any opposition that might at first be encountered. In the districts where there has been the greatest dispute on the subject, I am not sure if it would not be received as a positive boon. Both parties would have a known and acknowledged Standard, and this alone would do much to stop litigation, when there would be no room for misrepresentation.

Limitation.

I apprehend that there is no period of limitation to the time within which an application can be made under these measurement sections. It is absurd to suppose that if the proprietor of an estate or tenure, or other person in receipt of the rents, do not measure within a fixed time, he is to be debarred from measuring at all. The right to measure being conferred on the proprietor or the person in receipt of the rents, it must be held that, as long as the proprietorship or receipt of the rents continues, so long shall the right, that goes with the proprietorship or receipt of rents, continue. In fact, the law makes the right to measure a part and parcel of the right of the proprietorship or receipt of rent, and where the one exists, the other must exist also.

Appeals.

Under the ruling *No.* 386 *of* 1860, *Meer Mahomed Tuckee Chowdree, Appellant,* 17*th June,* 1861, the regular appeal under the old measurement law (contained in Section 26 of Act X., abrogated by the Sections of Act VI. given above) lay from the order of a Deputy Collector to the Collector, and from the order of a Collector to the Commissioner. But, as quoted above, Section 10 of Act VI. contains the provision

that "the decision of the Collector *on all matters enquired into and determined* by him under this or the last preceding Section shall be final, unless the same shall be reversed on appeal therefrom to the Civil Court. Such appeals shall lie to the *Zillah* Judge, &c." There is no mention made of a Deputy Collector here—and as the one hundred rupee limit cannot apply to this class of cases, the word Collector must here include Deputy Collector—and the appeal on all *matters enquired into and determined* by a Deputy Collector or Collector will lie direct to the Judge. The words "*enquired into and determined*" present some little difficulty. If the case were dismissed for some preliminary objection and nothing had been enquired into and determined, would this alter the course of appeal? Or could there be no appeal? The point is one which, however, may admit of some discussion, and as there has been no authoritative decision respecting it, I leave it as I find it.

CHAPTER XII.

Of suits respecting registry of transfer of Talooks or Tenures in the Zemindaree Sherishteh, under Section 27, Act X. of 1859.

Holders of tenures must register.

All dependent talookdars and other persons possessing a permanent transferable interest in land intermediate between the Zemindar and the cultivator, are required to register in the Sherishteh of the Zemindar or superior tenant to whom the

rents of their talooks or tenures are payable, all transfers of such talooks, or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every Zemindar or superior tenant is required to admit to registry, and otherwise give effect to all such transfers, (when made in good faith), and to all successions and divisions. If any Zemindar or superior tenant refuse to admit to registry, or otherwise to give effect to any such transfer or succession, the tranferee or successor may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act; and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the Zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession. Provided that no Zemindar or superior tenant shall be required to admit to registry or give effect to any *division or distribution of the rent* payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent, in writing, of the Zemindar or superior tenant. (Section 27.)

Zemindars to give effect to registry.

Procedure in case of refusal.

Proviso.

The object of this Section is to promote open dealing, and to prevent the Zemindar from making illegal exactions under the name of fines on succession or transfer. The penalty attached to non-registry is, that no transfer of an under-tenure will not be recognized in the Revenue Courts, unless so registered, or unless sufficient cause for non-registration be shewn to the satisfaction of the Collector. (Section 106). The law does not, however, contain any provision for enforcing the registry, if the Zemindar, who had been enjoined, refuse

or neglect to notice the enjoinment. As in the case of a Pottah and Kaboolyat, there is no provision that a copy of the Collector's order shall have the same force as registry; but, doubtless, in practice, such force would be given to it.

In *No.* 3076 *of* 1863, *Mr. J. C. Sarkies, Appellant, 1st July,* 1864, it was laid down clearly that a Zemindar is not bound to recognize any transfer of a tenure in regard to which application has not been made to have such transfer registered in the Zemindaree Sherishteh. Mere cognizance of the transfer is not sufficient to cure the defect of non-registration, unless it could be shewn that the Zemindar not only knew of the transfer, but accepted the transferee as his tenant. The receipt of rent by the Zemindar would amount to such accepting. If a Zemindar *have* recognized a transfer by receiving rent for a lengthened period, he cannot, although the transfer may not have been registered in his office, hold the original owner responsible, and ignore the rights of the transferee. (*No.* 2150 *of* 1863, *Noboo Koomar Ghose,* 15*th July,* 1864.) A person not obtaining an intermediate transferable right between the Zemindar and the cultivator, but stepping into the place of the cultivator himself, whose rights and interests in the land he had bought, is not compelled to notify his purchase under this Section. (*No.* 3043 *of* 1863, *Maharajah Satish Chunder Roy Bahadoor, Appellant,* 27*th June,* 1864.) Similarly, it was ruled in the case of *Mussamut Tárá Maní Dasí* 8*th September* 1864, that a right of occupancy is transferable, but the landlord is not bound under this Section to register the transfer. The proprietor of a registered tenure is liable for the rent, though out of possession, unless he can shew that he was ousted by the act of his landlord. (*No.* 814 *of* 1861, *Mussamut Mohun Malah, Appellant,* 27*th March,* 1862.)

A Zemindar might object that the transfer, by gift or sale, was made in bad faith, and this, if proved, would be a sufficient answer to the proceeding. He might also object that the transferee was not a solvent tenant, and that he would be less sure of the punctual payment of his rents than from the former possessors; but the law does not provide for this by allowing him to demand security.

Putnee talooks.

In this and other respects the similar provisions for Putnee talooks, contained in Sections 5, 6, and 7, Regulation VIII. of 1819, contrast favourably. According to established usage, the Zemindar is thereby permitted to demand a fee calculated at two per cent. of the yearly rent, and is also declared entitled to demand security to the amount of half the same yearly rent. As he can sell the tenure every half year in case of default, he is thus protected against loss; for it will be his own want of care if he allow the putneedar to default for more than half a year's rent. Unless the above conditions be complied with, the Zemindar can refuse to register. In case the Zemindar refuse adequate security, the dissatisfied party may apply to the Civil Court, which can compel the Registry by an injunction,—a power wholly wanting to the Collector. There is one point on which the above quoted Section and Section 27 of Act X. contain similar provisions, *viz.*, the division or distribution of the rent. Both agree in leaving this to private arrangement. It will be observed that Act X. does not rescind the provisions of Regulation VIII. of 1819 as to the registry of Putnee Talooks. They therefore remain in full force; but as they necessitate an application to the Civil Court, it may be a question whether a party could proceed, under Section 27 of Act X., to procure an order enjoining the Zemindar or other superior tenant to admit to registry

a Putnee Talook. I think he undoubtedly could so proceed. Putnee Talooks are certainly included in the definition "transferable interest in land intermediate between the Zemindar and cultivator." Again, according to the reasoning in *No.* 2313 *of* 1862, *Muddun Mohun Roy, Appellant,* 21*st August,* 1863, Section 27 (as well as Section 25) does not take away the right of proceeding in any other Court than that of the Collector, as, if this were intended, its provisions would have been incorporated in Section 23, the concluding clause of which expressly takes away such right. The provisions of Regulation VIII. of 1819, and of Section 27 of Act X., must therefore be held to be both equally applicable to Putnee Talooks, leaving it optional to adopt either mode of procedure. It will not be forgotten that, in a similar way, the Zemindar may either proceed under Regulation VIII. or under Act X. for the recovery of arrears of rent of a Putnee Talook.

Limitation.

There is no special rule contained in the law. The one year's limitation contained in Section 30 must therefore be held applicable.

Appeals.

An appeal from an order passed under this Section would lie from a Deputy Collector to a Collector, and from a Collector to the Commissioner. (Section 151). (*No.* 386 *of* 1860, *Meer Mahomed Tuckee Chowdree, Appellant,* 17*th June,* 1861.) It seems, however, that if the landlord deny the tenancy of the transferee, an appeal will lie to the Civil Court. (*Mussamat Tárá Mani Dási,* 8*th September,* 1861.)

CHAPTER XIII.

Of applications to dispossess grantees of rent-free lands under Section 28 of Act X. of 1859.

It was enacted by Section 10, Regulation XIX. of 1793, that all grants for holding land exempt from revenue, whether exceeding or under one hundred beegahs, *that had been made since 1st December*, 1790, or that might be made after the date of that Regulation by any other authority than that of the Governor General in Council, were null and void; and *that no length of possession should be held to give validity to such grants, either with regard to the property in the soil or the rents of it*, and proprietors were *authorized* and *required* to collect the rents, and to *dispossess the grantees*, and to *re-annex* the *lands* to their estates *without making previous application to a Court of Judicature*, or *sending previous or subsequent notice* to any Officer of Government. This relates to Bengal, Behar, and Orissa only. By Regulation XLI. of 1795, (Section 10), similar rules were enacted for grants of land, whether exceeding or under fifty beegahs, made since the beginning of the Fuslee year 1196 (October, 1788) in the province of Benares. By Regulation XXXI. of 1803, (Section 6), similar provisions were made for all grants of land made after the promulgation of that Regulation (which was passed on the 24th March, 1803) in the Ceded Provinces. By Regulation VIII. of 1805, (Section 21), the same was ordered with respect to the Conquered Provinces, Regulation XXXI. of 1803 being extended thereto. The promulgation of this Regulation

Section 10, Regulation XIX. of 1793.

Section 10, Regulation XLI. of 1795.

Section 6, Regulation XXXI. of 1803.

Section 21, Regulation VIII. of 1805.

with respect to the Ceded Provinces would thus become the extension of the Regulation to the Conquered Provinces, the date of which (11th July, 1805) should be taken as the time after which grants made could be re-annexed by the proprietors of estates in the Conquered Provinces. By Section 24, Regulation XII. of 1805, the provisions of Regulation XIX. of 1793 were extended to the Zillah of Cuttack, including the Pergunnahs of Puttespore, Kummardichour, and Bograe, in which districts, therefore, the 1st December, 1790, will be the date after which grants made are void and subject to be re-annexed as above.

Section 24, Regulation XII. of 1805

By Section 28, Act X. of 1859, it is enacted that so much of the above five Sections as authorize and require proprietors and farmers of estates and dependant talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Sections, of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or talook in which it may be situate, is repealed; and any proprietor or farmer, who may desire to assess any such land or to dispossess any such grantee, shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of Act X.

Section 28, Act X of 1859

It will appear very clearly that in such a suit, when tried by a Collector, there can be but one issue of fact, *viz.*, is the grant one which was in existence on 1st December, 1790, (or such other date, as has been shown above to apply to the other Sections), or has it been made since that date? If the grant is proved to have been in existence

Sole issue.

on that date, the Collector has no jurisdiction, as it was not created subsequently. A plaintiff's sole ground of action is, therefore, that the tenure is invalid by reason of having been created after 1st December, 1790, and the burden of proof lies on him. (*No.* 1914 *of* 1861, *Maharanee Inderjeet Koonwar, Appellant,* 19*th February,* 1863), See also *No.* 2068 *of* 1861, *Ramneedhy Boydo, Appellant,* 18*th March,* 1863; and *No.* 2158 *of* 1861, *Kenaram Malik and others, Appellants,* 23*rd August,* 1863.

Regular suit for Resumption.

In the case of *Bolanath Ghose, Appellant, 5th September,* 1861, it was laid down by the late Sudder Court that there is nothing in Section 28 of Act X. to prevent a plaintiff suing under Section 30, Regulation II. of 1819, (using of course the full stamp), under which law the burden of proving the lakheraj title falls upon the defendant. Again in *No.* 452 *of* 1863, *Baboo Madhub Chunder and others, Appellants,* 14*th March,* 1864, it is laid down that a Collector's decision under Section 28, Act X. of 1859, is not a finding which the plaintiff is not at liberty to question in a regular suit for resumption of the land. "We do not think," say the Judges, "it would be conclusive, even where the Collector finds that the lakhiraj has existed prior to 1790." Now, from these two decisions, the inference was drawn that the proceeding under Section 28 is a summary suit, and that a landholder might either proceed under that Section in the first instance, or institute a regular suit in the Civil Court; or, if unsuccessful under Section 28, he might either appeal, in which case he would be limited to the evidence recorded or filed before the Collector; or might commence, *de novo,* with a regular Civil suit. Two concurrent modes of procedure—a summary suit, and a regular Civil suit—would therefore be open to a plaintiff, and this, as I have shown, is the case with respect

to Section 25 also. This interpretation would be consistent with the arguments used in *No.* 2313 *of* 1852, *Muddun Mohun Roy, Appellant,* 21*st August,* 1863, already quoted. If a Civil action could be brought, the right to bring it seems not taken away by Section 28, as this Section contains no exclusive clause like that found at the end of the Section 23. But in *No.* 1682 *of* 1863 *Kishen Chunder Bishwas, Appellant,* 2*nd May,* 1864, we find it thus laid down.—"It is quite clear that it is only in the case of lands which are alleged to be held on a grant of date prior to 1st December, 1790, that a suit to resume can be instituted under Section 30, Regulation II. of 1819. When the title to hold as lakhiraj is *alleged to have arisen subsequent to that date,* proceedings by a proprietor wishing to have the lands assessed, or to dispossess the grantee, *must* be taken under Section 28 of Act X. of 1859; and the burden of proof will lie, in the usual way, on the person instituting the proceedings." This precedent seems opposed to what I have quoted above. As the point is of some difficulty, as appears from these contrary rulings, I venture to set the whole matter before the reader. The question might seem to resolve itself into this.—Before Act X. was passed, could a proprietor bring a Civil action for the resumption of grants made after 1st December, 1790, or had he no alternative but to annex the land by force, if requisite? It will be remembered that I have just shown that Section 28 seems not to take away such a right to bring a Civil action, if it existed. If the Civil action could have been brought, it would have been brought under Section 30, Regulation II. of 1819. By referring to the Preamble of this Regulation, it will appear that the provisions of Regulations XIX. and XXXVII. of 1793 having been found inadequate, and therefore having been repealed or modified, and further it

being necessary to declare the right of Government to assess all lands not settled for at the time of the permanent settlement, or subsequently, or not held free of assessment on valid titles, Regulation II. of 1819 was passed with the view of establishing, on proper principles, one uniform course of proceeding in resuming the revenue of lands liable to assessment. Now Regulations XIX. and XXXVII. of 1793, which were modified or extended hereby, do not apply exclusively to grants made before 1st December, 1790, and there is no part of the new Regulation II. of 1819 which limits them to such. On the contrary, Section 10 of Regulation XIX. of 1793, as has been shewn above, relates to grants made after December, 1790, and though it *authorizes* and *requires* proprietors to re-annex these lakhiraj tenures without application to a Court of Judicature, it does not forbid such an application in case the proprietor be unable to re-annex the tenures from opposition or other cause. Nor is any such prohibition contained in the modifying Regulation II. of 1819, Section 30 of which mentions "all suits preferred in a Court of Judicature by proprietors to the revenue of any land held free of assessment." Why should not "*all suits*" include suits to resume tenures created after December, 1790, and is it not very probable that it was so meant? When Regulation XIX. of 1793 was passed, proprietors might safely have been allowed to resume these grants. Government wanted to stop a fraudulent system, and in order to do so called on proprietors to assist, inducing them to do so by the prospect of advantage to themselves. Moreover, in 1793, it could easily be settled what tenures existed in 1790, three years before, or what did not exist; but in 1819, twenty-six years after, such a point, if disputed, could not be so easily decided, and certainly could not be safely left to the proprietor to decide

for himself except in very clear cases. From an entire review of the matter, it would therefore appear that the right to bring a Civil action for the resumption of grants alleged to be made after December, 1790, did exist before Act X. was passed, and as Section 28 of that law does not expressly take away this right, that it is still in existence.

Procedure as now fixed.

However, since the preceding paragraph was written, the point has been finally settled. In *No.* 70 *of* 1864, *Protab Chunder Paul and others, Appellants, 5th August,* 1864, it has been ruled that the Revenue Courts have exclusive jurisdiction under Section 28, Act X. of 1859, in cases of rent-free tenures created subsequent to 1790. See also (*No.* 1932 *of* 1863, *Sheikh Miyaján and others, Appellants, 9th August,* 1864.) Should, however, a plaintiff fail to establish his right to the land as part of his permanently settled estate, (which is the only ground of action under Section 28), and his suit be dismissed on this account, he is not debarred from suing in the Civil Court under Section 30, Regulation II. of 1819, to try the validity of the lakhirajdar's title; but in doing so, he exposes himself to be met and stopped by the plea of limitation. (*No.* 3303 *of* 1864, *Ram Churn Dutt and others, Appellants, 30th June,* 1864.) It will, therefore, in future, be well for a party about to sue for the resumption of lakhiraj, to examine carefully his grounds of action. If he sue first in the Civil Court, his doing so might be construed into an admission of the tenure having existed before 1790, and this might be held to estop him from suing subsequently in the Revenue Courts. In *No.* 3264 *of* 1863, *Dwarkanath Shamant and others, Appellants, 30th June,* 1864, it was laid down that, in a case under Section 28, it is for the plaintiff to prove that rent has been paid for the land at some time since the decennial settlement.

See also *No.* 546 *of* 1863, *Joy Kissen Mookerjee, Appellant,* 15*th July,* 1864. If, however, he fail to prove this, and his case, under Section 28, be dismissed, it appearing that the tenure has existed as a lakheraj tenure since the time of the settlement, there will be nothing to prevent him from suing in the Civil Court, under Section 30, Regulation II. of 1819, to contest the validity of the original creation of the tenure before 1790. The Revenue Court only decides the issue whether rent has been paid for the land since 1790, *i. e.,* whether the lands have been maal since that period. A finding in the negative on this point does not touch the question of the validity of the creation of the tenure before 1790,—a point which belongs exclusively to the jurisdiction of the Civil Courts. See *No.* 3303 *of* 1864, *Ram Churn Dutt and others, Appellants,* 30*th June,* 1864, *Supra. No.* 2633 *of* 1863, *Prabhoo Dúss and others, Appellants,* 22*nd June,* 1864. It seems that a person wishing to put another on proof of his title, not knowing whether it originated before or after 1790, is not bound to sue under Act X., but may sue under Regulation II. of 1819. (*No.* 466 *of* 1863, *Krithee Narain Chowdhry, Appellant,* 14*th August,* 1863.) A Zemindar is not entitled to resume more land than 100 beegahs, unless it be held under separate deeds. (*No.* 219 *of* 1863, *Hurryhur Mookerjee, Appellant,* 21*st December,* 1863.) This was, however, a Civil Court ruling. See, however, Section 10, Regulation XIX. of 1793, above. A putneedar is entitled to resume lakheraj, the right going with the putnee. (*Gya Ram Mundle,* 29*th July,* 1862). Parties about to proceed by suit in the Civil Court, will do well to consider the effect of the proviso relating to lakheraj in permanently settled estates in Clause 14, Section 1, Act XIV. of 1859.

Suits for a Kabooliyat.

I have already shewn in Chapter II. that a Zemindar having obtained a decree to resume lakheraj land, can, after issue of notice of the rates claimed, institute a suit for a Kabooliyat under Section 31, but arrears cannot be decreed him. (*No.* 969 *of* 1861, *Joykissen Mookerjee, Appellant,* 13*th July,* 1861.) But a suit for a Kabooliyat will not lie until the right to assess the land has been first established. (*No.* 215 *of* 1864, *Mohommed Miyanabul Hek, Appellant,* 12*th August,* 1864.) Nor will a suit for arrears of rent lie without assessing through the proper Courts, or demanding before hand by a notice, in due course, a specific amount of rent. (*No.* 653 *of* 1864, *Devi Dutt Chowdhry and others, Appellants,* 17*th August,* 1864.)

Limitation.

The concluding portion of Section 28, Act X., enacts that suits under the Section shall be instituted within the period of 12 years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period had elapsed or would elapse within two years from the date of the passing of Act X., then the suit was to be brought within two years of the passing of the Act. This second portion has now become obsolete, as the two years have passed. In *No.* 466 *of* 1863, *Krithee Narain Chowdry, Appellant,* 14*th August,* 1863, it is laid down that if the lakheraj existed before 1790, a Zemindar seeking to resume must bring his suit within 12 years of his acquisition of the Zemindaree; but if there is no proof that the lakheraj was created prior to 1790, no limitation will apply, because, under Section 10, Regulation XIX. of 1793, these tenures were declared null and void and resumable at any time. This precedent is quoted and given among Act X. decisions,

and is thus liable to lead to error. It is a precedent in civil cases, the decision having been passed in appeal in a civil case. It therefore will not apply to cases under Section 28, which are governed by the principle of limitation given in the end of that Section.

The right of action under this Section will not revive upon the succession of the heir to the person, who has allowed 12 years from the time of his right accruing to pass without asserting that right. (*No.* 3154 *of* 1863, *Nábí Baksh, Appellant*, 27*th July*, 1864.

Appeal.

The regular appeal fron the decision of a Collector or Deputy Collector lies to the Judge. (*No.* 1988 *of* 1861, *Bishwambher Misser and others, Appellants*, 19*th March* 1862), *which must be held to cancel* (*No.* 1322 *of* 1860, *Ramkoomar Mookerjee, Appellant*, 22*nd August*, 1861.)

CHAPTER XIV.

Of applications for services of notices of enhancement under Section 13, *Act X. of* 1859, *and herein of enhancement.*

What ryots must be served with notice in order to enhance.

Section 13 of Act X. enacts that NO UNDER-TENANT OR RYOT, who holds or cultivates land *without a written engagement or under a written engagement not specifying the period of such engagement, or whose engagement has expired or has become cancelled in consequence of the*

sale, for arrears of revenue, of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, SHALL BE LIABLE TO PAY ANY HIGHER RENT for such land than the rent payable for the previous year, *unless a written notice* shall have been served on such under-tenant or ryot in or before the month of Cheyt, *specifying the rent* to which he will be subject for the ensuing year, *and the ground* on which an enhancement of rent is claimed. Such notice *shall* be served by order of the Collector on the application (which may be on plain paper) of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If, for any reason, the notice cannot be served personally on the under-tenant or ryot, it shall be affixed at his usual place of residence, or if he have no such place of residence in the District in which the land is situate, the mode of service of such notice shall be by affixing it at the Mal Cutcherry of such land, or other conspicuous place thereon, or at the village Chrowree or Chowpal, or at some other conspicuous place in the village in which the land is situate.

Service of notice.

It will be observed that it is *the person to whom the rent is payable* that can apply for service of notice of enhancement. Here, as in the case of measurement already noticed, the law confers the right on the person in receipt of the rent. Such person may be a putneedar or a farmer, but, nevertheless, he has the right to enhance. It will not be necessary to show that his putnee or farming lease contains a Clause permitting him to enhance the rents of the ryots. (*See No.* 1609 *of* 1862, *Isshur Ghose, Appellant, 24th September,* 1862). The law gives him the right to do

Who may enhance.

so, and it may be a question how far, if at all, this right could be barred by a Clause conditioning for non-enhancement, though the breach of such a Clause might be made a ground of action for cancelling the lease, or for damages. I may here remark, that the law bears somewhat hardly on Zemindars who, before the passing of the law, let their lands on permanent leases. The whole increase of the rents goes to the lessee; the lessor having let the lands under very different circumstances from those under which his lessee is able to collect enhanced rents.

Whose rent can be enhanced.

The rent of an under-tenant or ryot can be enhanced—

1st.—If he hold or cultivate land without a written engagement "*Hold*" probably applies to an under-tenant who is not a cultivator. "*Cultivate*" to a ryot or cultivator. *2nd.*—If he have a written engagement, but one which does not specify the period of such engagement (*be-miyadee*). *3rd.*—If his engagement have expired. *4th.*—If it have become cancelled by the sale, for arrears of revenue, of the parent estate. (See Sections 37 and 52, Act XI. of 1859.)

Whose rent cannot be enhanced.

The rent of an under-tenant or ryot *cannot* be enhanced in the following cases:—*1st.*—If he hold or cultivate on a written engagement containing a term, which term has not expired, or which written engagement has not become cancelled by a sale for arrears. *2nd.*—If he be a ryot holding at rates which have not been changed since the time of the permanent settlement. I have treated this and the presumption of law in Section 4 already. *3rd.*—If he be a dependant talookdar or other person possessing a *permanent* transferable interest in land, intermediate between the proprietor of the estate and the ryots whose rent has not been changed since the time of the permanent settlement. Sections

15 and 16, with respect to these tenures, correspond exactly with Sections 3 and 4 with respect to ryottee holdings, for which see above. The rulings will be applicable *mutatis mutandis*. In the latter two cases, the under-tenant or ryot will be protected from enhancement against a purchaser at an auction for arrears of revenue. He will be so protected even if the purchase was made before Act X. was passed. (*No.* 2211 *of* 1862, *Ramnauth Lol Bhukat, Appellant, 7th August,* 1863.) In the first of the three cases there will be no such protection to the holder of an unexpired engagement. A pottah not being for one of the protected classes of tenures, is not good against an auction purchaser. (*No.* 1318 *of* 1863, *Radha Cant Dutt and Luckee Cant Dutt, Appellants,* 21*st January,* 1864.) The *protected classes* in this decision must be taken those protected under Act X., *viz.*, classes 2 and 3 above. We must, therefore, except from the statement, that there will be no protection in the first of the three cases, leases of the kind contained in Clause 4, Section 37 of Act XI. of 1859, *viz.*, leases of lands whereupon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereupon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk. These are protected from enhancement, unless the auction purchaser of the estate can show that they were held at what was originally an unfair rent. If he cannot, and if they have not been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years, they will be liable to enhancement. In the case *No.* 515 *of* 1863, *Isshun Chunder Kur and others, Appellants,* 18*th August,* 1863, it was ruled that the purchaser of a putnee talook is not entitled to enhance

the rents of ryots, who would have been protected from enhancement against the former proprietor. The power to void incumbrances under Section 11, Regulation VIII. of 1819, does not apply to leases granted to under-tenants. It may therefore be concluded, that the tenures protected by Act X., are protected absolutely and against any sale whatsoever.

It will be observed that, in the above, there is no mention made of right of occupancy ryots, nor is there any mention made of them in Section 13, and the classes shown above, as those whose rents can be enhanced, must be regarded independently of rights of occupancy. It was for a long time supposed by some of the most able officers, that ryots *not* having rights of occupancy, if served with notice to pay any rent, however high, would be liable for this rent if they remained in possession. This point has, however, been settled by *No.* 1953 *of* 1862, *Kalee Sheik, Appellant, 24th September,* 1862, where it is thus laid down:—"This is not a suit for ejecting the ryot, but merely to enhance his rent. The land-holder may eject the ryots, if they cannot agree as to the rate of rent. But if he elects to sue for rent at an enhanced rate, he cannot recover more than is fair and equitable. As the Judge has allowed one rupee per beegah, simply because that is the sum demanded, the case must be remanded to fix what is a fair and equitable rate."

Of the notice.

The notice must be served in or before the month of Cheyt, which is the last month of the Bengalee year. It must contain a specification of the rent claimed for the ensuing year and the grounds of enhancement, but the exact area need not be specified. (*No.* 610 *of* 1863, *Baboo Kheternath Dass, Appellant, 5th August,* 1863). If the notice disclose no

grounds of enhancement, this irregularity will be fatal to the suit. (*No.* 39 *of* 1863, *Bhowaninath Chuckerbutty and another, Appellants, 7th January,* 1864). The notice must also have been served within the time allowed by the law. A notice served on the 1st Beisakh was disallowed in *No.* 638 *of* 1862, *Mahtab Deo and others, Appellants, 18th September,* 1863. A plaintiff must be kept to the grounds of enhancement stated in the notice, and cannot proceed on other grounds. (*Hurree Mohun Acharjee and others, Appellants, 17th February,* 1864). A notice is regular, if it has been obviously issued on the part of the landlord, though it may not bear his signature or the signature of his agents; and it has been duly served, if posted on an Indigo Factory situate on the lands, this being a conspicuous place within the meaning of the Act. One notice so served is sufficient, though the lands be scattered over several Mouzahs. (*No.* 433 *of* 1863, *Hurronath Roy and others, Appellants, 27th April,* 1864.) A Naeb may sign a notice without any special authority. (*Digumbhur Mitter, Appellant, 13th March,* 1863). It will be well to examine the notice carefully and take any objection that can be made in the Lower Court. Such an objection cannot be taken for the first time on special appeal. (*No.* 1655 *of* 1862, *Ramzan Alee and another, Appellants, 17th February,* 1861).

The objection arising from informality in the notice, may of course be waived by the opposite party. (*Gungádhur Senapatee, Appellant, 9th August,* 1862). A notice of enhancement must be reasonably accurate and precise. A notice to pay a lump sum on the whole land in and out of defendant's possession is not sufficient. (*No.* 2472 *of* 1863, *Tarachand Roy, Appellant, 21st July,* 1864). A plaintiff cannot be prejudiced by suing in his plaint for less rent than that mentioned in the notice, though, of course, he could not

sue for more. (*No.* 1308 *of* 1863, *Mr. James Hills, Junior, Appellant,* 1*st August*, 1864). It will be safe for landlords to serve separate notices on all ryots, even on those who are joint-tenants. In *No.* 345 *of* 1862, *Jádáb Chunder Haldar, Appellant,* 14*th May*, 1863, one notice was allowed in regard to seventy-five separate holdings situate in nineteen distinct villages, *because the ryots and their landlord had been in the habit of treating them as one consolidated holding;* but the exception made in this particular case only tends to prove the rule, that a separate notice should be served in respect to separate holdings.

Contesting a notice.

An under-tenant or ryot, who has been served with notice of enhancement, may contest his liability to pay the enhanced rent either by complaint of excessive demand of rent, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent. The former method has been treated above (Chapter IV). The points to be decided in either case, would be the same. The only difference would, perhaps, be that, under the former method, the burden of proof would be thrown upon the ryot; under the latter, on the landlord.

Special rulings.

One of several joint proprietors of an estate can maintain a suit for enhancement of his share of the rent, even though no butwara has taken place. (*No.* 767 *of* 1863, *Troylochtaran Chowdry, Appellant,* 1*st April*, 1864,) and (*No.* 3542 *of* 1863, *Ram Lochun Dutt, Appellant,* 13*th July*, 1864). Bastoo lands are subject to enhancement on the usual grounds. (*No.* 294 *of* 1863. *Mr. T. J. Kenny, Appellant,* 4*th February*, 1864). Jungleboory tenures are also liable. (*No.* 234 *of* 1862, *Baboo Dhunput Singh, Appellant,* 5*th May*, 1864). Middlemen are liable to enhancement, and two-thirds of the surplus

profits was held a fair proportion to be awarded to the head landlord. In *No.* 11 *of* 1864, *Jadub Chunder Haldar, Appellant,* 30*th May,* 1864, Section 13 does not apply to farmers, whose rent is not capable of being enhanced under the procedure contained therein. (*No.* 3089 *of* 1863, *Nathoo Rám Sahoo, Appellant,* 28*th June,* 1864). But a farmer can, of course, proceed to enhance the rents of the ryots, as being the person to whom the rent is payable. In a suit for enhancement, the plaintiff is not bound to prove the former rates, but is entitled to rent at the rates of the neighbourhood. (*No.* 445 *of* 1864, *Bholunath Ghose, Appellant,* 13*th August,* 1864). If a suit for arrears of enhanced rent fail on account of an irregularity in the service of the notice, an order cannot be made as to the prospective liability of the defendant. (*No.* 909 *of* 1864, *Ishwar Chunder Ghosal, Appellant,* 20*th August,* 1864). But, from *No.* 2463 *of* 1862, *Hari Har Mookerjee, Appellant,* 1*st June,* 1863, it appears that when an issue has been framed as to the liability of the tenure to enhancement, and fully tried, a decree may be given declaring the liability of the tenure to enhancement or otherwise. There is a class of ryots in the Nuddea and other districts, called Ootbandee ryots. They hold Khash Khomar and other lands, (with respect to which rights of occupancy cannot be acquired), from year to year, paying rent only for the quantity of land actually cultivated by them during the year. Thereby they differ from other ryots, who pay rent for all the land in their occupation, even though a portion of it, varying from more to less than one-fourth, be fallow every year. In *No.* 331 *of* 1863, *Mr. T. J. Kenny, Appellant,* 2*nd February,* 1864, it was ruled that an Ootbandee ryot, who, being served with notice that, unless he pay enhanced rent for the ensuing year, he must quit the land, intimates his intention to

quit to the landlord or his agent, thereby gives a sufficient notice of relinquishment under Section 19. One of the most specious objections raised against Section 13 is, that if a ryot be served with notice of enhancement so late in the month of Cheyt, that he have not time within the month to have a notice of relinquishment served on his landlord under Section 19, in case he be not willing to keep the land at any higher rent than what he paid before, he is compelled by the provisions of Section 19 to pay such enhanced rent as may be decided on by the Court, for the ensuing year. It is said that the month for relinquishment should be at least one month later than that for service of notice of enhancement, in order to enable such ryots, as did not wish to keep their lands at a higher rent, to relinquish them without being liable for the higher rent of a whole year. No doubt, the law would be well amended on this point; but, as was actually ruled in the above decision in the case of the Ootbandee ryot, there is little doubt that *any ryot* who was served with notice of enhancement, and at once intimated to his landlord that he preferred giving up his land to holding it on and being liable to pay enhanced rent, would be held to have given a sufficient notice of relinquishment. To the legality of a notice of enhancement, it is necessary that it have been served through the Collector. But this is not at all necessary to the legality of a notice of relinquishment. Section 19 only enacts, that if the landlord or his agent refuse to receive the notice of relinquishment or to sign a receipt for the same, the ryot *may* make an application for service to the Collector; whereas Section 13 says that the notice of enhancement *shall* be served by order of the Collector. If, then, a ryot were served with notice of enhancement late in the evening of the last day of Cheyt, and then and there told the person serving the notice

that he would quit the land, there is little doubt that sufficient notice of relinquishment would have been given, provided the ryot followed up this notice by actually relinquishing the land. A hard case may be supposed where the ryot happened to be absent from home, but I doubt not that the equity of the law could be made to meet even this, through the equitable jurisdiction possessed by every Court of preventing the strict letter of the law from being used to work injustice.

Grounds of enhancement.

Section 17 contains the grounds upon which the rent of a ryot having a right of occupancy can be enhanced. I remarked above that Section 13 contains no distinction between ryots having rights of occupancy and those not having such rights. But here, in Section 17, three special grounds of enhancement, applicable to the former class, are laid down as the only grounds on which the rent of ryots having a right of occupancy can be enhanced. The question therefore arises —On what grounds can the rent of ryots *not* having a right of occupancy be enhanced? Can it be enhanced on these three grounds, or on other grounds besides these three? In *No.* 2960-1 *of* 1862, *Jan Alee, Appellant, 5th January,* 1864, it was ruled that, in a suit for a Kabooliyat at enhanced rates against a ryot not having a right of occupancy, it was not necessary that the plaintiff should state on what grounds he claimed a Kabooliyat at such enhanced rates. From this it would appear that in the case of a ryot not having a right of occupancy, a landlord is not limited to any grounds of enhancement. This interpretation would be the natural one, for the law limiting the landlord to three grounds of enhancement in the case of right-of-occupancy ryots, and not assigning any limits in the case of non-right-of-occupancy ryots, according

to the usual mode of interpreting statute law, no limits must be held to be fixed, and a landlord is at liberty to proceed on any grounds he pleases. It may be a question, whether if a notice be served, some grounds must not be assigned thereon. The strict wording of Section 13 would require such grounds to be stated, and perhaps it would be as well to insert them, but, at the same time, I think very general grounds would suffice.

The grounds upon which the rent of a ryot having a right of occupancy can be enhanced are then limited to the following three:—

I. That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

II. That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

III. That the quantity of land held by the ryot has been proved, by measurement, to be greater than the quantity for which rent has been previously paid by him.

And now of these in order.

I. The rate can be enhanced up to the limit of the "*prevailing rate*," *i. e.*, the rate which does actually prevail—not that which *ought* to prevail. (*Nos.* 593 *of* 1862, *and* 71 *of* 1863, *Lukhun Magillah, Appellant,* 25*th March,* 1863). Formerly there were what were called "Pergunnah rates," that is, custom had fixed certain rates which prevailed in each local division called a Pergunnah. Any ryot paying rents at rates lower than these, can therefore, under the first ground, be made to pay at these rates. If the progress of the country or other causes have made these rates inadequate as the landlord's due, he will have to proceed on the

second ground of enhancement. A *prevailing rate* will be proved by showing that the majority of the ryots pay this rate; it cannot be proved by showing that some few ryots pay this rate. As was remarked in *No.* 291 *of* 1862, *Lallah Probhoo Das sand Gobind Dass, Appellants,* 14*th March,* 1864, "a general custom is not proved by the statements of two individuals, or by proving that two particular tenants paid at a particular rate." The author has met with many cases where a plaintiff endeavoured to succeed under this clause by calling three or four or five ryots to prove that they paid a particular rate. This is done most commonly in those districts where the system of farming prevails. A farmer, who has just taken a farming lease, and wants to make all he can out of it, sets at once about raising the rents. He wins over some three or four ryots. An arrangement is made between both parties, and these ryots are called as witnesses to prove a rate which they themselves will never pay; or, which if they do pay, it will be made up to them some other way. If, on such evidence, a single case can be gained, it is immediately used as a precedent, and all the ryots are glad to come to terms, fearing they also will be sued, and a decree be obtained against them in a similar way, which will be all the easier after one case has been decreed. In a suit to enhance rent up to the prevailing rates for similar land in the vicinity, there may be special reasons for fixing the fair and equitable rate below the prevailing rate, as for instance in the case of a jungleboorce lease, where the ryot had at his own expense cleared the land. (*No.* 1112 *of* 1863, *Noor Mahomed Mundle, Appellant,* 31*st May,* 1864.)

The words "same class of ryots" refer to distinctions not found in Lower Bengal, or at least I am not aware of such distinctions; nor have they ever afforded ground for discussion in any case.

The land for which the enhanced rent is claimed, must be of the *same description* as that for which the prevailing rate is paid. It must also possess *similar advantages*. The words "places adjacent" refer to the general vicinity, not to the particular village in which the land is situated. (*No. 259 of* 1863, *Dukhina Mohun Roy Chowdry, Appellant, 5th August,* 1863). The rent of land on the edge of one Pergunnah could therefore be enhanced beyond the rate of this Pergunnah, if a higher rate were the prevailing rate of the next Pergunnah for adjacent lands of a similar description, and with similar advantages.

The simplest way of proving a prevailing rate is by genuine Jumma Wasil Bakee papers.

The defence of a ryot, sued under this clause, may be either that the rate claimed is not the prevailing rate, *or* that he does not belong to the class of ryots who pay that rate; *or* that his land is inferior, *or* does not possess the same advantages as land in the places adjacent, for which the rate claimed is the prevailing rate; or he may set up any two or more of the above pleas.

II. This is certainly the most difficult of the three grounds of enhancement to deal with successfully. Before going into the subject, I must remark that the *value of the produce* may be increased, the quantity of produce still remaining the same, by the making of a road or railway, by opening a new line of navigation, or a new market, and by many other occurrences. Again, the *productive powers of the land* may be increased, the value of the produce remaining the same, by manuring or draining, by the receding of a river, leaving the ground higher and more suitable for certain crops, or by a change in the channel bringing the water nearer for irrigation purposes, and by numerous other natural or artificial operations. And again, both the value of the produce and the productive powers of the land may be

increased. The social and commercial progress of the country at large, as operating in particular districts, is also a most important fact affecting the value of the produce of the soil. It will be observed that the closing words of the clause, *viz.*, "*otherwise than by the agency or at the expense of the ryot,*" reserve to the cultivator all the fruits of his own industry and frugality. If he save a little money and expend it on improving his farm, or if, by increased personal labour, he make improvements, the profit and advantages to be derived from these improvements are, by law, protected and reserved to him. If, however, in answer to an enhancement suit, he plead that the productive powers of the land have been increased by his exertions, the burden of proving this plea will be upon him. (*No.* 486 *of* 1864, *Nobin Kishen Bose and others, Appellants,* 18*th August,* 1864. On looking casually at the text of the law, it may appear, perhaps, a very simple matter to make the necessary calculations in order to decide a case of this kind. The total produce with its selling price at the time of suit, as compared with the same items some years back, may seem all that is to be ascertained. There are, however, several differential circumstances which must be taken into account, and which make a great variance in the simple calculation. Among these, I may note the following:—The progress of the country, that has for one of its results an increase in the value of the produce; has for another of its results a rise of wages. Money only represents the things that can be procured for money, among which food stands foremost. A rise in money wages, therefore, implies that more food, *i. e.*, a larger share of the produce, where it consists directly of food, must be given to the laborer. For this, therefore, a deduction must be made

Principle of enhancement.

Rise of wages.

from the gross increased value of the produce. Again, it is a fact now universally acknowledged by Political Economists, that where the soil can be made to produce more by additional labour, the increase will not be proportioned to the additional labour employed. Double the former labour, for instance, will not give double the former crop. If, therefore, additional labour be employed, though *more produce* be obtained than before, the proportionate price of the whole may be increased. Now, where high prices induce the cultivators to get more out of the ground, this fact, combining with the last mentioned one, will make the calculation obviously more difficult.

Additional labour gives a less proportionate return.

The case of *Mr. James Hills* vs. *Isshur Ghose* is now the leading case on the subject before us. This case (*No.* 1607 *of* 1862) first came before the High Court in appeal on 4th September, 1862. The following are the directions with which the case was remanded :—

Case of Isshur Ghose, —first hearing.

" He (Mr. Malthus) defines rent to be *that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being.* The word "*outgoings*" used in the above definition, must include a fair and equitable rate of wages for the labor employed in the cultivation of the lands, whether that of hired labourers paid out of capital, or the labor of the ryot himself or of his family, and also when the rent is paid in money, the labor and expenses of carrying the produce to market, or of converting it into money. We can only say that, in point of law, the landlord is entitled to receive a fair and equitable

rent, and that he is entitled to have it so adjusted with reference to the grounds of enhancement as to give him a fair and equitable *rate. The rent cannot exceed the old rent with such portion of the increase added to it as will render it fair and equitable under the altered state of circumstances.* If the former value of the produce was sufficient to cover all the costs of production, including fair profits as well as reasonable wages, the three Rupees'* increase is in excess of the costs of production, assuming the costs of production to remain the same. In determining whether the whole of that three Rupees, or any and what portion of it is to be added to the rent, the Judge must be guided by all the circumstances of the case. In the absence of proof to the contrary, he may take the old rent as a fair and equitable rent with reference to the former value of the produce. He must take into consideration the circumstances under which the value of the produce has increased, and *whether those circumstances are likely to continue,* and whether the value of the produce is likely to keep up to the present average in the ensuing year. *He must also consider whether the costs of production, including fair and reasonable wages for labor, and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased,* and he must make fair allowance on that account. We cannot lay down any better rule for his guidance than that which we have quoted from *Mr. Malthus.* It is not for us to determine the question of fact; we can only lay down the rule of law; but judging, as far as we can from the facts found by the Judge, it appears to us that the rent demanded by Mr. Hills is very reasonable, for he asks for only ten annas eight pie in addition to his former rent, out of the three Rupees' increase. The rent cannot be enhanced in respect

* The Judge had found that three Rupees was the increase of the value of the produce.

of those lands of which the produce has not increased. The case must be remanded, in order that the rent may be enhanced to a fair and equitable rate, so far as such enhancement is warranted by the ground of enhancement mentioned in the notice. The rent fixed must not exceed the amount of one Rupee per beegah demanded by the notice."

Ishur Ghose's case—second hearing.

The case having been decided by the Additional Judge of Nuddea, in accordance with these directions, was a second time appealed. (*No.* 972 *of* 1863, *Mr. James Hills, Appellant, 2nd September*, 1863.)

The decision of the Additional Judge, Mr. Elphinstone Jackson, was founded by consent of both parties on most voluminous evidence recorded in a similar case by Mr. Collector Grey. The calculations made by the Additional Judge were as follows, these calculations being made for 16 beegahs of land:—

1*st*.—The ryot was allowed for his own labour 3 rupees per month=36 rupees per year.

2*nd*.—It was calculated that, besides the ryot's own labour, each beegah would require the labour of six men for one day, to put in the crop, weed, &c., equal 96 men for 16 beegahs, which at two annas per diem gives 12 rupees.

3*rd*.—The seed was then taken at Re. 1 per beegah for the *dhan* and cold weather crops, and was not objected to.

4*th*.—The keep of cattle, and a boy to look after them, were also allowed at the rate of Rs. 12 for the sixteen beegahs, and the charge was not objected to.

I.

This gives—		Rs.	A.
Wages of ryot	.. ..	36	0
Cost of extra labour	.. ..	12	0
Seed @ 1 per beegah	.. ..	16	0
Boy and keep of bullocks	..	12	0
	Total	76	0

or between Rs. 4 and 5 per beegah as the direct cost of production; as the wages of labour and price of seed.

In addition to this, calculation must be made for the stock required by the ryot. This was made as follows:—

1*st*.—One plough and four bullocks would be required, it was calculated, for the cultivation of 16 beegahs. The bullocks were estimated @ Rs. 12 per head.

2*nd*.—A cowshed to keep them in was computed to cost, with repairs, Rs. 4.

3*rd*.—A golah, to keep the grain in, was allowed for @ Rs. 3.

4*th*.—The value of a plough, sickle, harrow, and other implements of husbandry was calculated @ Rs. 3 for the sixteen beegahs.

5*th*.—The ryot's own dwelling house was allowed for at Rs. 15.

II.

This gives—

Cost of Fixed Stock.		Rs.	A.
4 bullocks @ Rs. 12 each ..	..	48	0
Cowshed for ditto ..	..	4	0
Golah to store grain ..	..	3	0
Value of plough, harrow, &c.	..	3	0
Ryot's dwelling house ..	..	15	0
	Total.	73	0

The Additional Judge calculated that, deducting the Rs. 16 for seed in the first of the above two calculations, the remaining Rs. 60, wages, would have to be borrowed by the ryot, and interest @ 20 per cent. per annum paid during the half-year that the ryot has to wait for the crop to come to maturity. The Judge calculated the interest on half of 60 Rupees for six months, which comes to Rs. 7 As. 8, supposing the ryot to use the produce of his own land for half the year, on which, of course, he would not have to pay interest.

To cover the items of interest on the capital invested in Fixed Stock and renewal of Stock, the Additional Judge allowed 50 per cent. on the cost of Fixed Stock Rs. 73, which comes to 36-8.

In addition to the above, Rs. 15 were allowed as risk or insurance on the value of the crop, Rs. 148, calculating at 10 per cent. The total of the OUTGOINGS on account of expenditure was therefore as follows :—

			Rs.	A.
Wages of labour and seed		..	76	0
Interest on do.	..	..	7	8
Interest on stock	..	..	36	8
Risk on cultivation	..	..	15	0
		Total.	135	0

As the value of the produce the Additional Judge had taken, 9-4 per beegah, Rs. 148 for the 16 beegahs, and deducting from this Rupees 135, there remains Rs. 13, and this difference he took as the rent of twenty-three beegahs to allow for fallow and the inequality of the two distinct descriptions of crops which are obtained from the lands. This gives the nine annas per beegah, the amount fixed in the decision from which Mr. Hills appealed.

Having thus given the calculations of the original decision, I proceed to point out the items disallowed by the High Court. These were, first, the charge for the ryot's house. The High Court Judges thus expressed themselves :—" *We think that this sum cannot be allowed, in point of law, on account of a house.*

Charge for a house.

An allowance for a house cannot be made in addition to a fair allowance for wages ; for, as contended by the learned Counsel for the plaintiff, there is no stronger reason for allowing a house in addition to wages, than there is for allowing clothes and food."

The item was, however, allowed to stand as not interfering with the result of the decision, in consequence of there being some doubt whether *only* 3 Rs. per month were allowed by the Additional Judge as wages, by reason of the house having been allowed for. The principle, however, to be observed in future was clearly laid down. "A charge for a house cannot be allowed in addition to *a proper sum* for wages."

Charge for risk.

The next item disallowed was Rs. 15 for risk of cultivation. One among other reasons for this was, that an *average* value of the crops having been taken, insurance or risk is included herein.

I now place the two calculations in juxtaposition, to enable the reader to comprehend them more clearly.

By the Additional Judge of Nuddea.

	Rs.	A.
Wages of ryot	36	0
Additional labour	12	0
Boy and bullocks	12	0
Interest on half the above sum @ 50 per cent. for half-year	7	8
Seed	16	0
Interest and renewal of Stock, valued at 73 Rupees	36	8
Risk or Insurance	15	0
Total of outgoings ..	135	0

By the High Court.

Wages of ryot	36	0
Additional labour	12	0
Boy and bullocks	12	0
Interest on half the above sum at 50 per cent. for half-year	7	8
Seed	16	0
	83	8

	Rs.	As.
Brought over ...	83	8
Sum deducted from interest on stock as allowed by the Judge on account of a house for the ryot, but which cannot be wholly disallowed in this case without remand to ascertain whether it should be added to wages	7	8
Interest on stock as allowed by Judge @ 50 per cent. after deducting Rs. 7-8 included on account of allowance for a house on the Rs. 36-8 allowed by the Judge ..	29	0
Total of outgoings ...	120	0

In both decisions Rs. 148 was accepted as the value of the produce of the 16 beegahs, and the sum remaining after deducting the outgoings was divided by 23 (beegahs), allowing for fallow and inequality of crops. The High Court's decision leaves 28 Rs. to be thus divided, which gives more than one rupee per beegah. One rupee having been originally sought, a decree was given at this rate.

A review of judgment was applied for, and the petition was heard on 17th March, 1864. Much discussion ensued, and many points were ably dealt with, but the above judgment was left intact.

Another mode of calculation.

The above mode of calculating the outgoings having been adopted by the Lower Courts, the High Court, when trying the case in appeal, made use of these same calculations. But it must not be supposed that these calculations, and no others, should be made in all cases tried under this Clause of the law hereafter. Some similar principle should of course be followed. It should be *first* ascertained if an increase of the value of the produce has taken place; *secondly*, if the quantity of produce has remained the same; *thirdly*, if the wages of labor have increased. The value of the produce being calcu-

lated, the *outgoings* must be computed, and the latter being deducted from the former, the balance will be *rent*.

The plan to be followed in calculating the outgoings presents the greatest difficulty. Of the entire number of officers employed in trying Act X. cases, the greater portion can scarcely be expected to be sufficiently conversant with the science of political economy to carry out the necessary investigations so as to lead to indubitable results. It took two months to record the evidence upon which the above case was decided, and amid the press of work devolving upon most officers, two *days* would be almost too much to devote to a single case. Again, the numerous items, upon which conflicting evidence had to be taken, and the well-known uncertainty of native testimony, would leave the results very doubtful, where sufficient time and attention could not be devoted to the task. The Author ventures to give below the mode of investigation adopted by him in a large number of these cases in the Nuddea District. The calculations made satisfied him of the fact, that one rupee could be paid without undue hardship, and in these cases, which were subsequently upheld in appeal, he gave a decree for one rupee a few months before the second decision of the High Court in the case of Isshur Ghose appeared. Most of the lands were of the same kind as those of Issur Ghose, some of them in the same, and some in the neighbouring Pergunnahs. The main feature of the principle followed, was to eliminate from the calculation all items relating to the *prime cost* of the ryot's fixed stock, *interest* on the capital necessary to purchase this stock, and *return for capital*, or allowance to provide for wear and tear. This was done by taking the cost of cultivating one beegah of *dhan*, or paddy, and the same of the cold weather crops, calculated by looking to the actual expenditure which would be incurred, if the hire of

Value of produce of one beegah.

I. Rice 18 arhees @ 4 for the Rupee	4	8	
II. Cold weather crop 6 arhees @ 1 for the rupee	6	0	
Total value of produce ...			10 8

Difference applicable to payment of rent, Rs. 2 4

If only two-thirds of the ground sown with *dhan* be re-sown with the cold weather crop, the other third must pay the old rent and the difference between this and the new enchanced rent. Let us allow for this, and also for one beegah in four being fallow. We shall then have two beegahs producing a full double crop—one beegah producing a single crop of *dhan* and the fourth beegah, fallow, producing nothing but some thatching grass, which, however, is not without some value. For the two beegahs the full cultivation will be necessary, for the third beegah only the cultivation for *dhan*, and for the fallow beegah no cultivation, the calculation stands thus :—

Cost of production of two beegahs @ 8-4	16	8
Cost of production of one beegah of *dhan* ⅔ of 8-4 ... . nearly	5	0
Cost of production of one beegah, fallow ...	0	0
Total cost of production of four beegahs ...	21	8

Value of double crop of two beegahs @ 10 8	21	0
Value of *dhan* of one beegah	4	8
Value of one beegah, fallow	0	0
	25	8
	21	8
Difference for rent	4	0

or one rupee for each beegah. Now, if insurance or risk be disallowed in accordance with the decision of the High Court, the calculation will be still more *easy*. This item was allowed by the Author before the second decision appeared. The very high rate of interest (50 per cent.) had also been allowed, looking to the *actual* state of things under which the ryot borrows food from the mahajun and pays this interest for the loan. The arguments used in the High Court's decision are, however, against allowing this high rate of interest, and this also will make the overplus applicable to rent larger than at first made by calculations meant to be conducted on the principle of making every possible allowance in favour of the ryot, consistent with doing justice to both parties.

The decision of the High Court applies to a case where it was alleged that the *value of the produce* had increased. The other case, of the productive powers of the land increasing, would, however, involve similar enquiries. The value of the produce might increase and the quantity of produce might diminish, and in the same way the productive powers of the land and so the quantity of produce might increase, while the value of the produce became less. The subject must be looked at in all its bearings in order to secure results just to both parties.

When first this important decision of the High Court was passed, there was a sort of idea prevalent among the ryots in Nuddea, that this *one* decision would be conclusive in *all* similar cases; that, in fact, a landlord had only to serve notice of enhancement, institute a suit, and file a copy of the High Court's decision in the case of Isshur Ghose, in order to obtain a decree for rent at one rupee per beegah. It is scarce necessary to remark that the rule of evidence as to *res inter alios actæ* supplies a sufficient answer to this doubt.

Parties to a suit are not bound by a decision in another suit to which they were *not* parties. It must be remarked, however, that the decree of a Court of competent jurisdiction fixing the rates of adjacent lands, though not *conclusive* evidence, can yet be received as evidence. (*T. J. Kenny, Appellant, 29th September,* 1864). This kind of evidence would be particularly adapted to suits for enhancement on the first ground contained in Section 17. In *No.* 414 *of* 1864, *Deeno Nath Málik, Appellant,* 12*th August,* 1864, it was laid down that making a garden on garden ground, or growing bamboos on homestead land, was not increasing the productive powers of the land, so as to bring the case within the Clause before us. In *No.* 937 *of* 1864, *Kewajah Chyman Kajah, Appellant,* 27*th August,* 1864, it was ruled that a landlord is entitled to an (enhanced) assessment in respect to fruit trees as being the produce of the soil, but not in respect of profits realized from the use of stalls or huts erected by the tenant for the accommodation and convenience of people frequenting a Fair or Mèlâ annually held on the land.

III. The third ground of enhancement involves few important considerations. It seems to suppose that rent is paid at so much per beegah, kanee, or other local measure of land. In *No.* 2039 *of* 1863, *Ram Narain Nundy, Appellant,* 17*th February,* 1864, it was ruled that the land not being let at so much per beegah, but the boundaries, area, and jumma payable in one sum being defined in the pottah, enhancement on the ground of the quantity of land being more than that for which rent had been previously paid, could scarcely take place. This seems to have been a case in which land within certain boundaries roughly estimated at so many beegahs had been let for a certain rent. *In No.* 1055 *of* 1863, *Mr. J. A. Courjon, Appellant,* 16*th February,* 1864, it was ruled that the proviso in a Kabooliyat

that the tenant should pay at pergunnah rates for land found on future measurement to be *in excess of the recorded area,* was to prevent a tenant from encroaching on the khas lands of the Zemindar, and did not vary the strict terms of the lease binding the tenant to pay a certain rent for an area found by previous measurement. This is doubtless a special case, but the same principle seems to be found in it which was enunciated in the previous decision. The burden of proving that the tenant holds more land than he pays rent for is upon the landlord, who should adduce proof of this allegation. If he fail to do so, the Court is not bound to depute an Ameen to make a measurement and find out for him what he has legal means of ascertaining. *(No. 894 of* 1864, *Hora Mohun Mookerjee, Appellant,* 14*th September,* 1864.*)*

Limitation.

I have already observed that there is no period of limitation to prevent a landlord from proceeding to claim enhanced rent by service of notice at any time; but, after service of notice, he must sue within *three months* of the expiry of the year for which the enhanced rent is claimed, if the ryot will not pay and if the enhancement have not been confirmed by a competent Court. (Section 32.)

Appeals.

The regular appeal in *all* cases involving enhancement lies from the decision of a Collector or Deputy Collector to the Judge, no matter what the amount of the suit may be. (See Section 153).

CHAPTER XV.

Of application for service of notice of relinquishment under Section 19, *Act X. of* 1859.

Any ryot who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention *in writing* to the person entitled to the rent of the land, or his authorized Agent, in or before the month of Cheyt of the year preceding that in which the relinquishment is to have effect. *If he fail to give such notice and the land is not let to any other person, he shall continue liable for the rent of the land.* If the person entitled to the rent of the land, or his agent, refuse to receive any such notice, and to sign a receipt for the same, the ryot *may* make an application on plain paper to the Collector, who shall thereupon cause the notice to be served on such person, or his agent, in the manner provided in Section 13, that is, personally, if possible; but if not possible, the notice shall be affixed at his usual place of residence, or if he have no such place of residence in the District in which the land is situate, by affixing the notice at the Mal Cutcherry of such land or other conspicuous place thereon, or at the village Chowree or Chowpal or at some other conspicuous place in the village in which the land is situate. (Section 19).

Ryot at liberty to relinquish his land, by giving notice.

If he fail to give notice, liable for the rent.

It has been already pointed out, that the right-of-occupancy is the ryot's privilege; it does not also give the landlord a right to compel him to continue his occupation. *Any ryot,* therefore, the right-of-occupancy ryot as well as any other, can give up his land at the close of any year. He

must give notice to his landlord, however, that the landlord may be informed before hand, so as to be able to let the land to some one else.

It is not necessary to serve the notice in the first instance through the Collector's Court. It is only, if the notice will not be received and a receipt given for it, that the ryot *may* resort to the Collector's Court. It is not imperative on him to do so, and if the tender of the written notice and its refusal, together with the refusal of a receipt, were proved, this would be a valid service. But mere proof of the service of a notice of relinquishment without proof of actual relinquishment, will not be a sufficient answer to a suit for arrears of rent. (*No.* 625 *of* 1864, *Nobin Chandra Ray Sarma, Appellant,* 15*th August,* 1864.)

If the land have been let to another, this alone will be a sufficient proof of relinquishment made and accepted.

CHAPTER XVI.

Of cases of resistance of process under Section 147, *Act X. of* 1859.

Resistance of process.

Section 147 enacts that any resistance or opposition to the lawful process of a Collector, under Act X., may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil Justice. When, in any such case, the offender is not present in Court, the Collector

may summon him to answer to the charge, and if, after due service of the summons, he fail to attend, may issue a warrant for his apprehension. Orders passed by Collectors, under this Section, shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of Section 151.

Law for resistance to Civil process.

The law for the punishment of resistance or obstruction to Civil process may be found in Sections 22, 23, 24, and 25 of Regulation IV. of 1793, and Sections 24, 25, 26, and 27 of Regulation VI. of 1793, also Regulation IX. of 1799, which portions of the old law have not been repealed. See also Sections 226 to 230, and Section 268, of Act VIII. of 1859, (corresponding to Sections 362 to 366, and Section 421 of the Draft of the new Civil Code). There are, however, several offences which would fall under certain Sections of the Penal Code, (Sections 173, 183, 184,) and as by Section 2 of the Penal Code, persons are liable under the Code, *and not otherwise*, for acts contrary to the provisions thereof, such offences should now be sent to a Magistrate to be dealt with.

Limitation.

The general period of limitation, one year, contained in Section 30, would seem to be applicable to these cases.

Appeals.

Section 151 says that all orders passed by a Collector under Act X., *not being judgments in suits or orders passed in the course of suits and relating to the trial thereof, or orders passed after decree and relating to the execution thereof,* shall be appealable to the Commissioner, and all such orders passed by a Deputy Collector, shall be appealable to the Collector. The latter portion of Section 147 excepts orders relating to resistance of process from the class printed in italics above. But this class being that in which the

appeal does *not* lie to the Commissioner, the orders in question being especially excepted from the class, must be held to be appealable to the Collector or Commissioner, as the case may be.

CHAPTER XVII.

Of sales of Putnee Talooks under Regulation VIII. of 1819.

Section 166 of Act X. enacts that nothing contained in that Act shall be held to affect the right vested in proprietors of land *under direct engagements with Government*, of bringing to sale for arrears of rent Putnee Talooks and other similar tenures under the provisions of Regulation VIII. of 1819. I have already shown that there is nothing to hinder them, if they like, from proceeding under Act X. for the recovery of arrears of rent due on account of such tenures.

Definition of a Putnee Talook.

A Putnee Talook is a tenure created by a Zemindar, to be held, at a rent fixed in perpetuity, by the lessee and his heirs for ever, (Section 1). It is capable of being transferred by sale, gift, or otherwise; it is answerable for personal debts and subject to the process of the Courts of Judicature like other real property, (Section 3). A Putneedar is entitled to exercise all the rights of ownership with respect to the land which the Zemindar himself might, but for the Putnee, have exercised. (*Gya Ram Mundle, Appellant, 29th July*, 1862.) The holders of Putnee Talooks can create similar sub-tenures called Durputnees.

Durputnee, Seputnee.

And the holders of these can again create further sub-tenures called Seputnees. The holder of a sub-tenure stands in the same position to the person from whom he holds his sub-tenure as the original putneedar stands to the Zemindar. (Sections 3 and 4). The law, however, only extends this expressly to Putnee Talooks of the fourth degree.

Fee upon transfer and security.

The Zemindar is bound to give effect to a transfer by registering the transferee's name in his Sherishteh. He is, however, entitled to a fee upon the alienation calculated at two per cent. on the rent; but this fee is in no case to exceed one hundred rupees, nor is it ever to be paid by a purchaser of a Putnee Talook at a sale for arrears under the rules given hereafter. The Zemindar is also entitled to demand security to the amount of half the yearly rent. This applies to every case of transfer, being one of the original liabilities of the tenure, (Section 5). The Zemindar may refuse his sanction to a transfer until the security and the fee be given. If security be tendered and refused, the party tendering may appeal to the Civil Court, which, if satisfied of the sufficiency of the security, may direct the Zemindar, by injunction, to accept it. No division of the rent can be made without the Zemindar's express sanction, which he cannot be compelled to give, (Section 6). In case of a sale in execution

Attachment, if security be not given.

of a decree of Court, or a sale for arrears under the rules given hereafter, if security be not tendered within one month, the Zemindar may send a Sezawul and attach the tenure. Such attachment shall have the nature of a trust, any surplus remaining from the collections after deducting the rent and the expenses of attachment shall be held in deposit for the purchaser. If the collections fall short of the rent, the tenure and person of the proprietor shall be liable, (Section 7).

Zemindars, *i. e.*, proprietors *under direct engagements with* Government, may apply twice a year to bring tenures of this description to sale for arrears of rent. It will be observed that the words "*under direct engagement with Government,*" exclude Putnee-dars or other sub-holders under the Zemindar from proceeding under this law for the sale of similar tenures of the second, third, or fourth degree. A suit under Act X. is *their* only remedy in the case of arrears, and the sub-tenure may be eventually sold under Section 105 of that Act. The application for sale by a Zemindar must be made on the 1st Bysakh, or on the 1st Karthik, to the Collector. Formerly, a second petition had to be presented to the Civil Court, but this was abrogated by Section 1, Act XXXIII. of 1850. The application must contain a specification of arrears, which, with a notice that in default of payment, the tenure will be sold by public sale on the 1st Jeyt following, will be posted up in the Cutcherry of the Collector. A similar notice is to posted at the Zemindar's Cutcherry, and a copy is to be sent to be published at the principal Cutcherry, town or village on the land of the defaulter. *The Zemindar is exclusively answerable for the observance of these forms.* The notice is to be served by a single peon, who is to bring back the receipt of the defaulter or his manager; or failing this, the signatures of three substantial residents in proof of the notice having been duly published. If the notice have been served before the 15th Bysakh, this will be sufficient. The same rules apply to the application to be made on 1st Karthik for a sale to take place on 1st Aughun. If, however, enough be paid to reduce the arrear to less than one-fourth of the total demand from the beginning of the year to the end of Karthik, the sale

Application for sale.

Application 1st Bysakh, sale 1st Jeyt.

Application, 1st Karthik; sale, 1st Aughun.

on 1st Aughun cannot take place. The sale shall be conducted by the Collector. His Deputy or duly authorized Assistant may probably also conduct it, although Section 16, Regulation VII. of 1832, which expressly authorized this, has been repealed by Act X. of 1861. A person shall attend on the part of the Zemindar with a statement of the payments made up to the day of sale, together with a receipt for, or certificate of, the notice being duly published in the Mofussil. No lot is to be put up for sale till the presiding officer have examined the statement and the notice; *and the observance of these forms must be recorded in the proceedings.* If the sale be held on the 1st of Aughun, the kistbundee must also be produced and examined, to see if the arrear be more than one-fourth as pointed out above. The Zemindar is responsible for the above papers. The public officer holding the sale is only responsible for conducting it in accordance with the Regulation, (Section 10). The land is to be sold to the highest bidder. Any one except the actual defaulter may bid. Fifteen per cent. of the purchase money is to be paid down at once. An officer may refuse a bid, unless satisfied that this amount will be forthcoming in two hours. If it be not paid, the lot shall be resold on the same day. A failure to make good a bid by the necessary deposit, is a contempt and punishable accordingly. If the remainder of the purchase money be not paid by *noon of the eighth day* after sale, notice of resale on the following day, *i. e.*, the ninth from the first sale, shall be given, by beat of drum through the bazaar of the sudder station of the Zillah. The lot shall be resold at the risk of the first purchaser, who shall be answerable for any sum in which the proceeds of the second sale may fall short of

Mode of sale.

Responsibility.

Resale.

those of the first sale. Such deficiency is leviable by the same process as that used in execution of decrees of the Civil Court.

Forfeiture of deposit.

The deposit of fifteen per cent. will, in case of default, be applied to defray the expenses of the sale, and the balance be forfeited to Government, (Act XXV. of 1850). Before the passing of this Act, the deposit was credited to the defaulter, but this occasioned a practice of fraudulently suffering the forfeiture in collusion with the defaulter, which led to the change in the law. By Act X. of 1861, this Act is rescinded in so far as it relates to sales in execution of decrees. If a Putnee Talook were sold under Section 105 of Act X., the forfeited deposit would therefore have to be credited to the defaulter.

Effect of sale on under-tenures.

The effect of a sale of a Putnee Talook, *for its own arrear in the above manner*, is to annul all sub-tenures and other incumbrances originating with the defaulter, unless the right to create such have been expressly conveyed in the original lease. This does not, of course, apply to the classes of ryots protected under Act X. Here, I may also remark, that a putnee tenure created since the time of the permanent settlement is itself liable to be voided by the sale of the parent estate for arrears of the Government revenue, unless protected by special registry under Act XI. Sub-tenures are only voidable when the Putnee Talook is sold as above for its own arrears. The rule does not apply to a private sale or any other transfer. (Section 12.)

Under-tenants can pay arrear or lodge money to stay sale.

Talookdars of the second degree are empowered (Section 13) to stay the sale, after it has been advertised, by paying in the amount of the arrear shown to be due on the day

of sale. They may also lodge money antecedently for is a milar purpose. If the amount lodged be rent due, this must be stated at the time of depositing it. It will then be carried to the credit of the depositing Sub-talookdar in liquidation of any claim to rent on account of the year or months for which the notice of sale may have been published. I may remark that this provision is founded on a principle now well-established in English law, and which might be well put in practice in India in many cases, *viz.*, that a tenant who has been forced to pay some demand to which the landlord was primarily liable, is entitled to deduct the amount from his rent, or to recover it again from the landlord, as money paid to his use. (See *Taylor* vs. *Zamira, and other decisions. Smith's Leading Cases, Vol. I., Fifth Edition, page* 151 *and following pages.*) If the depositor have paid his rent and make the advance from private funds, there shall thereby be created a lien on the tenure saved from sale, in the same manner as if the loan had been made upon mortgage. The depositor is entitled to get possession of the tenure in order to recover the advance from the profits thereof Nothing will stay the sale on the day fixed, except the payment of the arrear. But a Civil action will afterwards lie for its reversal. However, between the service of the notice and the day of sale, the talookdar may apply for a summary investigation, if he dispute the arrear. An award, if made, will of course prevent a sale; but if the case be pending on the day of sale, and the Zemindar insist on the sale taking place, it must go on. The purchaser, having paid in the whole purchase money, is entitled to a certificate, and the Zemindar will be bound to put him in possession on his giving the

Depositor may obtain possession.

Summary investigation.

Purchaser how to obtain possession.

usual security, and also to allow him access to any papers in his Cutcherry connected with the tenure. Failing this, the Nazir will put him in possession as under a decree of Court. If the former talookdar or the sub-talookdars offer opposition, the purchaser may apply to the Civil Court for aid, and the Judge will issue a proclamation warning the ryots and others of their liability for rent to the purchaser alone. If further opposition be offered, likely to lead to a breach of the peace; the Police, on a written application being presented, are to assist, and the opposing party are declared liable for any thing that may happen. (Section 15.)

In case of opposition.

Of the proceeds of sale, one per cent. is to be credited to Government. The arrear due, with interest and costs, is then to be paid to the Zemindar. No arrear but that of the current year, or of the year just expired, if the sale be at the commencement of the following year, can be thus satisfied. The balance remaining (if any) is to be held in deposit for two months to meet any claims of the sub-talookdars or others who may think themselves injured by the sale.

Disposal of proceeds of sale.

Any one conceiving himself to have possessed a valuable interest in the tenure sold, may at any time *within two months* bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss he may have sustained by the sale. The Court may decide equitably on this claim. If there be several claims, and the deposit be insufficient to meet them all, it must be divided proportionably. No suit of the above nature can be brought by a party who has not paid up his own rent; and he must prove having done so, when his claim is being investigated. If no claims be made within two months, the defaulter may petition the Court

Suit for compensation.

for a certificate of "no claims;" and upon exhibiting the certificate to the Collector, he will be entitled to receive the surplus balance of the sale deposited as above.

Appeal.

An appeal used to lie to the Commissioner for the reversal of the sale of a Putnee Talook on the grpund of the irrevelancy of the Regulation, under Section 16, Regulation VII. of 1832. This Section has, however, been repealed by Act X. of 1861, and the only remedy now for the reversal of the sale is by a Civil suit under Section 14, Regulation VIII. of 1819. Such a suit must be brought within one year from the date of sale. (Clause 3, Section 1, Act XIV. of 1859.) If a Putnee sale be set aside by the Civil Court, and the Zemindar then sue for the original arrears, under Act X., he will not be entitled, in calculating the period of limitation, to deduct the time during which the suit for setting aside the sale was pending. (*No.* 95 *of* 1864, *Kishtonath Roy and another, Appellants,* 19*th August,* 1864.

CHAPTER XVIII.

Of the institution of suits and the proceedings connected therewith and consequent thereupon.

SECTION I.

Parties to suits.

General rule.

I have already pointed out more than once, in the course of the preceding pages, that the relation of landlord and tenant must exist

between parties to suits under Act X. and Act VI. Zemindars need not always sue in person. Their Naibs, Gomastahs, and other persons employed in the collection of rent and the management of land may institute and defend suits in the name and on behalf of the landholders by whom they are employed. (*No. 237 of* 1863, *Romanath Roy, Chowdry, Appellant, 4th August,* 1863.—*Nos.* 713 *to* 716 *of* 1862, *Meea Jan Gomastah, Appellant, 26th March,* 1863). In such cases all the provisions of Act X., by which the personal appearance or attendance of parties to a suit is or may be required, are declared applicable to such Naibs, Gomastahs, or other persons, and anything which is required or permitted to be done by a party in person, may be done by the above persons. Processes served on any such person shall be as effectual for all purposes in relation to the suit as if served on the landholder in person, and the provisions relative to the service of process shall apply to them also. (Section 62). Surburakars and Tehsildars of estates held under khas management, whether such estates are the property of Government or private individuals, are placed on a similar footing, (Section 29). If the Collector, or the Surburakar or Tehsildar of any such estate in Bengal, Behar, and Orissa, proceed against a defaulting ryot or under-tenant under Section 25, Regulation VII. of 1799, such ryot or under-tenant *may* contest the demand in the Civil Court. Under the above Section, if an arrear remain due on the 1st of the month following that for which it is due, the property of the defaulter may be attached, and himself and his surety arrested and detained in the custody of peons for ten days, after which he must be brought before the Civil Judge. I refer the reader to the unrepealed

Naibs, Gomastahs, &c.

Surburakars, Tehsildars.

Section 25, Regulation VII. of 1799.

portion of Regulation VII. of 1799, the substance of which is too long to be included here.

Personal attendance.

A party to a suit need not necessarily appear in person. He may employ an authorized agent or Mooktiyar to conduct the case on his behalf; but this will not excuse his personal attendance when such is required by the summons or order of the Court. (Section 71). In such case, if he fail to appear, judgment by default may be passed against him. The only persons absolutely exempted from attendance are persons of the female sex *and* of a rank or class which, according to the custom and manners of the country, would render it improper for them to appear in public. (Section 70.)

Absolute exemption.

Agents.

An agent who enters into a contract in his own name without disclosing the name of his principal, or the fact of his being only an agent, will be liable, if the other party to the contract with a full knowledge of all the particulars, choose to trust him in his individual capacity. If otherwise, the principal, when discovered, is liable to be sued on the contract; but both agent and principal cannot be proceeded against. (*No.* 61 *of* 1862, *Heera Lol Buxee, Appellant,* 11*th November,* 1862). (*No.* 2882 *of* 1863, *Sheik Kamyáb, Appellant,* 27*th June,* 1864.) An admission by an agent was held not to be equivalent to an agreement for rent justifying a claim for eleven years' rent in arrears. (*No.* 2782 *of* 1862, *Kalee Kishur Roy Chowdry, Appellant,* 24*th September,* 1863.) A person who, on attaining his majority, ratified a pottah granted by his guardian's Gomastah, cannot afterwards question the pottah, neither can a person who derives his right from that person. (*No.* 1576 *of* 1863, *Chunder Kanth Mookerjee, Appellant,* 31*st March,* 1864).

Death of one of the parties.

The death of one of the parties to a suit does not cause the suit to abate. (*No.* 2282 *of* 1863, *Juggo Mohun Singh, Appellant,* 13*th April,* 1864). In a rent case the cause of action survives. The general rule of law is that the death of a party does not cause the suit to abate, *if the cause of action survive.* In a similar way, the marriage or bankruptcy of either party will not cause the suit to abate. (See Sections 99 to 106 of Act VIII. of 1859, corresponding to Sections 147 to 156 of the new Draft Bill).

Section II.

Institution of Suits. The Plaint.

Suits when to be instituted.

Suits should be instituted in the Revenue Office of the District; or when a Sub-division of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the Sub-division in which the cause of action shall have arisen; or when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a Sub-division, but who has been specially authorized by Government to receive such suits, then in the office of such last-mentioned Deputy Collector. If the lands be situate in more than one District or Sub-division, the suit must be brought in the office of the District or Sub-division in which the greater part of the lands is situate. If a doubt about boundaries arise, the Board of Revenue will decide the point, or the Collector, if all the lands be situate within his District, and such decision shall be final. (Section 20, Act VI). Should the jurisdiction of a Collector and a Civil Judge not be conterminous, the suit will be

instituted before the Collector in whose jurisdiction the land lies, but the appeal will lie to the Judge in whose Civil jurisdiction the land is situate. (*Lutif-un-nissa, Appellant,* 22*nd August,* 1864).

Mode of institution—Plaint.

Suits are instituted by presenting a plaint or statement of claim, which must contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim, and the date of the cause of action. (Section 34). This plaint is to be presented by the plaintiff himself, *or* by an authorized agent who has personal knowledge of the facts of the case, *or* by an agent accompanied by a person having such knowledge. (Section 35).

Verification of plaint.

The plaint must be verified by the plaintiff *or his agent,* by subscribing the following words, or words to the like effect:—

"I, A. B., do declare that the above statement is true to the best of my knowledge and belief."

If the statement of claim contain any averment which the person *making the verification* shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. (Penal Code, Sections 191-3, &c). If an agent have made a false verification, his principal would not be liable, unless it could be proved that he had abetted the offence of his agent. (*Tara Purshad Roy Chowdry,* 12*th August,* 1862). If the plaint do not contain the necessary particulars, or if it be not properly verified, it may be returned or allowed to be amended at the discretion of the Collector or Deputy Collector, (Section 42). A plaintiff cannot lump in one suit several and distinct claims. (*No.* 411 *of* 1861,

Sheik Moorad Ally and others, Appellants, 21st February, 1863). Generally speaking, dissimilar claims cannot be joined in the same suit, and those parties cannot be joined as plaintiffs or defendants, between whom no common legal privity exists.

Documents.

Care should be taken by a plaintiff to file with his plaint any documents in his possession upon which he may rely to support his claim. Unless such documents be delivered in, or their non-production be sufficiently excused, or unless the Collector or Deputy Collector see fit to extend the time for producing the same, they cannot afterwards be admitted. (Section 38). If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver to the Collector a description of the document, in order that the defendant may be required to produce the same. (Section 39).

SECTION III.

Proceedings upon presentation of Plaint—Summons—Warrant—Attachment.

Summons to defendants.

The plaint being in due form, the Collector will direct the issue of a summons to the defendant. If the plaintiff satisfy the Collector or Deputy Collector that the personal attendance of the defendant is necessary, or if the Court require such personal attendance, the summons shall contain an order to the defendant to appear personally on a day to be specified in the summons. *Otherwise and ordinarily, the summons shall order the defendant to appear personally,* OR *by an agent duly authorized on his behalf, who has personal knowledge*

of the subject, OR *who shall be accompanied by a person who has such personal knowledge.* (Section 43). The day fixed for the first hearing shall be fixed with reference to the state of the file, and the distance at which the defendant may be at the time from the place where the Court is held. The summons shall, moreover, direct the defendant to produce any document which he may have in his possession of which the plaintiff demands inspection, or upon which the defendant himself may rely for his defence, and if he fail to produce them on the first hearing of the case, he cannot afterwards put them in. (Sections 44-62.) The summons shall also enjoin the defendant to bring with him his witnesses, if they are willing to attend without issue of process.

Fixing of day for first hearing.

Documents of defendants.

The summons is to be served by delivering a copy to the defendant personally when practicable; or, if the summons cannot be served on the defendant personally, by affixing a copy of it on *some conspicuous part of his usual place of abode,* and also affixing a copy of the same in the Collector's Office. (Section 45). The mode in which service has been effected is to be endorsed on the summons by the Nazir. (Section 46). The young officer will not fail to notice the difference in the mode of serving the above summons, and a summons against a defendant in a Criminal or Civil case, which may be left with an adult male member of the defendant's family residing with him, (Section 71, Act XXV. of 1861, and Section 53, Act VIII. of 1859. Section 84 of the new Draft Bill). There is no similar provision under Act X. A service on defendant's wife would be good in no case.

Mode of service of summons on the defendant.

If the usual place of abode of the defendant be in another district, the summons together with the cost of service (by money order) shall be sent by the public post to the Collector of such District, who shall issue the summons, and return the same after service, with the prescribed endorsement, to the officer by whom it was transmitted to him. The cost of executing the process ordered on presentation of plaint, must be deposited in Court on the same day or the the day after the presentation of plaint. Failing this, the case will not be brought on the file. A plaintiff may, however, present another plaint within the period of limitation. Every process issued by a Collector under Act X., must be under his seal and signature, and must be served or executed at the cost of the party at whose instance it is issued. Such process is served or executed in Lower Bengal by peons appointed under Act V. of 1863, (B.C.), and in the N. W. P. By peons appointed under Act XI. of 1863. The cost of service and, in the case of summons to a witness, the travelling expenses of the witness, must be deposited in Court before the process is issued. If, in any case, the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge. (Section 14). In any suit against an under-tenant or ryot for the recovery of an arrear of rent, or against an agent for the recovery of any money papers or accounts, the plaintiff may, with his statement of claim, present an application for the issue of a warrant of arrest. The defendant must, however, be resident within the district in which the suit is instituted, the

Execution of process in another district.

Cost of process to be deposited in Court. Consequence of not doing so.

Free summons.

Warrant of arrest.

law containing no provision for the execution of this warrant in another district. The further proceedings on an application for a warrant have already been given above. (Chapter V).

Attachment before Judgment.

By Section 16 of Act VI. the provisions relating to attachment before Judgment, contained in Sections 81 to 90 of Act VIII. of 1859, are extended to all suits brought under Act X. and Act VI. The same provisions are embodied in Sections 119 to 130 of the Draft of the New Code, and are changed in no way, save that the application for attachment must contain a declaration that the defendant is about to dispose of or remove his property, which declaration must be in *writing and must be verified as the plaint.* I proceed to state the law on the subject as it now stands. If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, IS ABOUT TO DISPOSE OF HIS PROPERTY, OR ANY PART THEREOF, *or* TO REMOVE ANY SUCH PROPERTY FROM THE JURISDICTION OF THE COURT, where the suit is pending, the plaintiff may apply to the Court *either at the time of the institution of the suit, or at any time thereafter until final judgment,* to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, and, on his failing to give such security, to direct that any property, MOVEABLE *or* IMMOVEABLE, belonging to the defendant, shall be attached until the further order of the Court. (Section 81). The application must contain a specification of the property, and the *estimated value of each article or item thereof.* The plaintiff, at the time of making the application, must declare that the defendant is about to dispose of or remove his property. The Court, after examining the applicant and making such further investigation as it may

consider necessary, shall, if satisfied, issue a warrant to the proper officer, directing him to call upon the defendant, within a time to be fixed by the Court, either to *furnish security* in a certain specified sum, *or to appear and shew cause* why he should not furnish security. *The Court may also in the warrant direct the attachment, until further order, of the whole or any portion of the property specified in the application.* If cause be not shewn, or if security be not furnished, such portion of the property as shall be sufficient to fulfil the decree may be attached. If cause be shewn, or if security be furnished, the attachment will not be made, or, if made, will be withdrawn. An order for the attachment of property is appealable. Under Act X. the appeal would probably lie as the appeal in the actual case.

Warrant to issue.

Appeal.

If a claim be preferred to the property attached, it must be investigated. If it appear that the attachment was applied for on insufficient grounds, or that there was no probable ground for instituting the suit, the Court may award such damages, not exceeding one thousand rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned by the attachment of the property. *Such an award will bar a suit for damages.* (Section 88.) The right of a person not a party to the suit will not be affected by an attachment of the above nature, nor will it prevent the property from being sold in execution of another decree. But if it appear that this other decree was obtained by fraud, the Court attaching may stay the sale. If the property attached be lands paying revenue to Government, or tenures saleable under Regulation VIII. of 1819, if the defend-

Intervener.

Compensation for vexations or groundless attachment.

ant neglect to pay the revenue or rent, the party not in possession may pay and, by applying to the Court, obtain possession. (Section 91.)

CHAPTER XIX.

Of the proceedings on the first day of hearing.

SECTION I.

Non-appearance, appearance, and examination of parties.

On the day fixed for the trial or first hearing of the case, or on any subsequent day to which it may be adjourned prior to the recording of an issue for trial, if neither of the parties appear in person or by Agent, the case will be struck off. This is not a bar to a fresh suit. (Section 54.) If the defendant only appear and deny the claim, *judgment by default* will be passed against the plaintiff. This will bar a fresh suit. The plaintiff may, however, apply within fifteen days for a revival of the suit. If the defendant, however, admit the claim, there will be a decree for plaintiff on such admission *without costs.* If there be several defendants, this admission will be good only against the defendant making it. (Section 55.) If the plaintiff only appear, the Collector or Deputy Collector, *upon proof of due service of the summons,* (or proclamation under Section 52), shall proceed to examine the plaintiff or his agent, and, after

If neither party appear.

If defendant only appear.

If plaintiff only appear.

considering the allegations of the plaintiff and any documentary or oral evidence adduced by him, *may either dismiss, or postpone, or decree the case ex parte.* (Section 56.) If the case be postponed, and the defendant appear on the day to which it is postponed, he may be heard on such conditions as to costs or otherwise, as the Court may think proper. (Section 57.)

If both parties appear.

If both parties appear in person or by agent on the day fixed, or any subsequent day to which the hearing of the case may be adjourned *for sufficient reason to be recorded*, the Collector or Deputy Collector SHALL proceed to examine such of the parties as may be present, and *either party or his agent may cross-examine the other.* If either of the parties be not bound to attend personally, any agent by whom he shall appear or any person who shall accompany such agent (See Section 35), shall be examined and cross-examined in like manner as the party himself would have been, had he attended personally.

Written statements.

At the time of examination, the defendant, if he think fit, may file a written statement of his defence. (Section 59.) This is the only written pleading that can be filed in proceedings under the Rent Law. Written statements should be as brief as the nature of the case admits, and should not be argumentative; but each statement should be confined, as much as possible, to a *simple narrative of the facts,* which the party, on whose behalf the written statement is made, believes to be *material to the case, and which he believes he will be able to prove.* (Section 123, Act VIII. of 1859). The examination of

Examination of parties how to be conducted.

the parties or their agents shall be upon oath or affirmation, or otherwise, according to the law for the time being in force relative to the examination of witnesses. THE SUBSTANCE OF THE EXAMINATION

SHALL BE REDUCED TO WRITING IN THE VERNACULAR LANGUAGE OF THE COLLECTOR OR DEPUTY COLLECTOR, AND FILED WITH THE RECORD. (Section 60.) If, at such examination, the agent of either party be unable to answer any material question which the Collector or Deputy Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer, if interrogated in person, the presiding officer may postpone the case to a future day and direct the party himself to appear on such day. From *No.* 547 *of* 1863, *Baboo Sekkraj Roy, Appellant,* 19*th April,* 1864, it appears that a suit should scarcely be dismissed at this stage for want of knowledge in an agent. The wording of the Law "may postpone," not "shall postpone," leaves, however, a discretion to be properly used. If the party fail to attend on such future day, judgment by default may be passed against him, or such other order made, as the Court may deem proper. (Section 61).

Witnesses, if brought may be examined.

If either of the parties bring their witnesses on the first day of hearing, their evidence *may* be taken. (Section 61). If the defendant rely on any document for his defence, he must deliver it into Court *at the first hearing of the suit.* Unless it be so delivered, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, *it cannot afterwards be admitted.* (Section 62). If, on the examination of the parties and of any witnesses they may produce, and after consideration of the documentary evidence adduced, a decree can be properly made, a decree may be made accordingly. (Section 63).

Defendant's documents.

When a decree may be made on the first day of hearing.

SECTION II.

Of fixing the issues and adjournment.

When issues are to be fixed.

If, on the examination of the parties, it appear that they are at issue on any question upon which it is necessary to hear further evidence, the Collector or Deputy Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit, and the trial shall take place on that day, unless there be sufficient *reason for adjourning it, which reason shall be recorded.* (Section 65).

Some remarks about issues.

Issues are either of law or fact. In order to frame the issues correctly, a close attention must be paid to the allegations of the parties made verbally or contained in the plaint and written statement in defence. If there be a difference between the contents of the latter and the oral statements of the parties, the issues must be framed with respect to the oral statements. The issues should exhaust the whole of the points in dispute, and no order should be passed in the decree upon a point not put in issue. I think issues may be conveniently sub-divided as follows—first into *issues of law,* and *issues of fact.* The former again into *issues in bar,* and issues of law arising out of the allegation of the parties. The latter into *issues on facts averred by the plaintiff and denied by the defendant,* AND *issues on facts averred by the defendant and denied by the plaintiff.* In rent cases the most important issues in bar are as to limitation and jurisdiction. The preceding pages have supplied many instances of cases brought in the Revenue Courts which could only be entertained in the Civil Courts. If the Court find against the plaintiff on an issue of this kind, the case will be disposed of *without going*

into the merits. If the Court find for the plaintiff, issues of one or all of the three remaining classes may be framed, as to which more hereafter. It will be observed that it is the duty of the Collector or Deputy Collector to fix the issues. The Rent Law contains no provisions for fixing issues by agreement of the parties, nor for the amendment of the issues at a subsequent stage of the proceedings. However, in *No.* 176 *of* 1862, *Nurrohurry Mohonto, Appellant,* 12*th August,* 1862, it was laid down that "if there is a variance between a plaintiff's statement and proofs, arising from inadvertence or mistake, the Court may allow the issues to be amended; but that is entirely at the discretion of the Court."

Adjournments.

The Collector or Deputy Collector may, in any case, grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also, from time to time, in order to the production of further proof, or for other sufficient reason *to be recorded,* adjourn the hearing or further hearing of any case in such manner as to him may seem fit. (Section 72.) In the case of *Jotun Chundra Roy, Appellant,* 29*th June,* 1862, it was ruled that it is optional to the Court to give time or not, and in *No.* 188 *of* 1863, *Kistojeebun Buxee, Appellant,* 5*th August,* 1863, it was laid down that the refusal of the Lower Court to grant further time to produce additional evidence is not a ground for interference in special appeal. As a general rule, the party at whose instance and for whose benefit an adjournment takes place, should *pay the costs of such adjournment.*

Section LII.

Of Witnesses.

The issues being fixed and a day appointed for hearing evidence thereupon, it becomes necessary for both parties to

secure the attendance of their witnesses on the appointed day. Witnesses may be summoned either to give evidence or to produce documents. If a witness be summoned merely to produce a document, it will be a sufficient compliance with such a summons to send or cause the document to be produced. (Section 26, Act II. of 1855). In order to secure the attendance of the required witnesses, an application must be made to the Court in sufficient time before the day fixed for trial, to enable the witnesses to be summoned in time to attend. (Section 66). By Section 67, the provisions of the Regulations and Acts and all other rules for the time being in force *relating to the evidence of witnesses, for procuring the attendance of witnesses, and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not,* in cases before the Civil Courts of the Presidency of Bengal, except in so far as the same may be inconsistent with the provisions of Act X., are made applicable to suits under that Act. Section 21 of Act VI. (B. C.) of 1862 renders the same rules and laws applicable to suits under this latter Act. The provisions in question are found in Act VIII. of 1859. If this law be repealed by the new Civil Code, the corresponding Sections in the latter contain no change, and correspond almost word for word with the existing Sections in Act VIII. I proceed to give the law.

Witness to produce a document.

Application for summons.

Civil law applicable to witnesses.

The travelling and other expenses of witnesses to be fixed by the Court, including an allowance for one day's attendance, must be paid into Court, and tendered to the witness at the time of serving the summons, if it can be served personally. The Court

Expenses of witnesses.

may direct a further sum than what has been lodged to be paid a witness on sufficient cause being shown, and if it be not paid, may cause it to be levied by attachment and sale; *or may discharge the witness without requiring him to give evidence.* He may also be so discharged, if delayed for a longer period than one day, and the expenses of his detention be not paid when ordered.

Summons what to contain.

The summons must specify the time and place at which the witness is to attend, also whether his attendance is required for the purpose of giving evidence, or to produce a document, or for both purposes. A document must be described in the summons with convenient certainty. The names of any number of persons may be inserted in one summons. The summons is served by *exhibiting the original and delivering or tendering a copy.* Service is to be made, if possible, on the person himself. If not possible, then on *any adult male member of his family residing with him.* If this, too, cannot be effected, the summons is to be returned with an endorsement that it could not be served. The time and mode of service is in any case to be always endorsed on the original summons. If the witness reside within the jurisdiction of a Court other than that in which the suit is pending, the summons is to be transmitted to any Court within whose jurisdiction the witness resides, and this latter Court will have it served and the return transmitted to the former Court. If the summons cannot be served in the manner above-mentioned, the Court, upon being certified thereof by the return of the serving officer, *and upon proof* that the evidence of the witness or the production of the document is material, and that the witness or other person absconds or keeps out of the way for the purpose of

How to be served.

Proclamation when to issue.

avoiding the service of the summons, may cause a proclamation requiring the attendance of such persotu give evidence or produce the document at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode. If such person shall not attend at the time and place named in such proclamation, the Court may, *at the instance of the party* on whose application the summons was issued, make an order for the attachment of the moveable and immoveable property of such person, to such amount as the Court shall deem reasonable, not being in excess of the costs of attachment and of any fine to which the person may be liable. If the person, upon this, appear and satisfy the Court that he did not abscond or had not notice of the proclamation in time, the Court may release the property attached, making any order it deems fit about the costs of the attachment. If the person do not appear, or appear and fail to satisfy the Court as above, the Court may direct the property or a portion of it to be sold to satisfy the costs of attachment, and any fine the Court may impose. If the costs and fine be paid, the property will be released. The above fine would now be imposed under Section 172 of the Penal Code.

Attachment.

Fine.

If a person duly summoned in the manner prescribed above, without lawful excuse, fail to attend, the Court may order him to be apprehended and brought. If he abscond, the same course as to attachment, &c., may be followed as in the case of a witness not duly summoned, but in whose name a proclamation has been issued. Such an offence is punishable under Section 174 of the Penal Code.

Person duly summoned failing to attend.

If a witness, being present, refuse, *without lawful excuse* to give evidence or to produce any document in his custody or possession,

Refusal to give evidence.

the Court may commit him to close custody for such reasonable, time as it may deem proper, unless he shall, in the meantime, consent to give evidence or to produce the document. If, after the expiration of such time, the witness shall persist in his refusal, the Court may proceed to dea with him according to the provisions of the law for the time being in force. (Sections 175-179, Penal Code, and Chapter X. of the Criminal Procedure Code). Under the latter law, the Court can impose a fine up to 200 Rupees. If a heavier fine or imprisonment appear a fitting punishment, the case must be forwarded to a Magistrate, and if the offender be a British born subject, to a Justice of the Peace. Bail must be accepted for the offender's appearance, if offered.

If a person summoned as a witness abscond or keep out of the way, so that the case is decided without his evidence, the party calling him, if injured by the decision, and able to show that such injury could have been avoided by the evidence of the person aforesaid, can bring an action for damages against him in a Civil Court.

Party to a suit not attending or refusing to give evidence

If any person being a party to a suit, who shall be ordered to attend to give evidence or produce a document, shall without lawful excuse, fail to comply with such order, or being present in Court shall, without lawful excuse, refuse to give evidence or to produce any document in his custody or possession named in the summons, the Court may either pass judgment against the party so failing, or refusing, or make such other order in relation to the suit as the Court may deem proper: and this applies equally to a hearing on appeal.

Any person present in Court may be called to give evidence.

Any person present in Court may be called upon, *though not summoned,* to give evidence or produce a document then and there in his actual possession, and shall be liable in all respects as if he had been summoned.

I shall close this Chapter by remarking that it is the duty of a party to secure the attendance of his witnesses on the day of hearing. Special Appeal *No.* 1845 *of* 1863, *Tiluk Chund Sahoo, Appellant,* 17*th February*, 1864, on the ground that the Court decided without summoning appellant's witnesses, was rejected, it appearing that he had failed in the above duty.

CHAPTER XX.

Of the proceedings on the day fixed for trial of the issues.

SECTION I.

Case how to be proved. Documents and examination of witnesses.

I shall now suppose the day to have arrived on which both parties will have produced all their proofs, and the Collector or Deputy Collector will proceed to consider them and decide the case. Evidence to prove the case is of two kinds, *viz.*, the testimony of witnesses and documents. The rule is that the *best evidence* must be given. This does not mean that weaker evidence may not be received because stronger may be had, but that when original evidence can be had, secondary or subordinate evidence must not be received or acted upon. A few examples will best illustrate this. If a Zemindar sue a ryot for arrears of rent, alleging that the ryot gave a

Evidence of two kinds. Best evidence to be given.

Kabooliyat, he must file the Kabooliyat, and cannot call witnesses to prove that he has it at home, and what its terms are. If, however, the Kabooliyat had been lost, he might call witnesses to prove this and the contents of the lost Kabooliyat. Again, the copy of a document cannot be received while the original may be had. Again, if the genuineness of a Kabooliyat were disputed, the writer and the subscribing witnesses would be the best evidence, and as long as they could be produced, the evidence of a person said to be present when the Kabooliyat was given, though not a subscribing witness, would be bad. The best evidence to prove Jumma-Wasil Bakee papers, would be the writer of them. The best evidence to prove measurement Chittahs, would be the person who made the measurement and compiled the Chittahs.

The testimony of witnesses is called parol, oral, and sometimes personal evidence. Documents are called written evidence. Real evidence includes documents and other *things* from the inspection of which a judgment may be formed. Any facts admitted by the parties themselves in the plaint or written defence, or in their depositions, or orally by their agents or pleaders, need not be proved.

Admissions.

The admissions of a person who is an agent or trustee for the real plaintiff or defendant, will be good as against such plaintiff or defendant, though these admissions be made by letter without the sanction of an oath (*See Bauerman* vs. *Radenius—Smith's Leading Cases, Vol. II.*)

Hearsay evidence must not be received. What is meant by hearsay evidence is when a witness deposes to *the very fact to be proved* not of his own knowledge, but by stating that he heard this fact from another person. If *the very fact to be proved* is

Hearsay.

what this other person said, this is not hearsay evidence and is admissible. For example—"Bux Alee told me that he saw Jan Mahomed give a Kabooliyat for four beegahs of land at one rupee per beegah," is hearsay evidence and inadmissible; but "I heard Jan Mahomed say to his landlord, I consent to cultivate the four beegahs and pay one rupee per beegah," is not hearsay evidence and is admissible. In a late Circular of the High Court, (see Appendix), Judicial Officers were advised as to the duty of *ascertaining by a few questions put to each witness at the proper time, whether he is speaking of matters within his own knowledge, or merely of those which he has heard from others; and, if the former, what are his means of knowledge.*

Parties not appearing on the day of trial.

If neither of the parties appear on the day of trial, the case will be struck off. The plaintiff may, however, bring a fresh suit, if not prevented by the law of limitation. If only one party appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court. (Section 68).

Both parties present.

Burden of proof.

If both parties are present with their witnesses, it becomes a question whose witnesses are to be examined first. The answer is, the witnesses of that side upon which the burden of proof lies. *The burden of proof lies upon the side asserting the affirmative fact.* The test prescribed is, to see which side would succeed, if *no evidence* were offered by either party on the point in dispute. Let us take an example—Jan Mahomed says "I never gave the Kabooliyat filed to my landlord." The landlord asserts that Jan Mahomed did give the Kabooliyat. The giving the Kabooliyat is then the affirmative fact, and the burden of proof lies on the landlord who asserts it. His witnesses will, therefore, be examined first. Again, Jan

Mahomed says "I admit the Kabooliyat, but I have paid my rent." Here the payment of rent is the affirmative fact asserted by Jan Mahomed, upon whom, therefore, lies the burden of proof, and whose witnesses must, therefore, be examined first. It will be easy to see, in both these instances, and more clearly in the latter, that if neither party called any evidence, the tenant in the former case, and the landlord in the latter case, must succeed. The party, therefore, against whom the verdict would be given if no evidence were produced, is the party upon whom lies the burden of proof and whose witnesses must first be examined; and afterwards those of the opposite party.

Issues as explained above.

Referring now to my division of issues given above, *if the issue be one on a fact averred by the plaintiff and denied by the defendant,* the burden of proof will lie on the plaintiff, and his witnesses must be called first. But *if the issue be one on a fact averred by the defendant and denied by the plaintiff,* the burden of proof will lie on the defendant, and his witnesses must be called first.

Evidence only on issue.

The evidence must be strictly confined to the issues. If the issues have been properly fixed, they involve the whole of the points in dispute, and evidence on the issue is evidence as to the points in dispute, which is all that is required. The observance of this in Mofussil Courts is most difficult, owing to the general character of native evidence, and the general unfitness of the class of practitioners, who have the conduct of rent cases in the Courts of the Collectors and Deputy Collectors. The observance of the rule must, however, be carefully attended to; and Judicial Officers, by doing so, will find their labours considerably lessened from not having to record a quantity of facts and assertions utterly unconnected with the actual points in dispute. Another very important

remark connected with this subject is, that a party must prove his case as laid in the plaint. For instance, if a party rely on a document, and fail to prove it, he is not entitled to succeed, and cannot be permitted to set up a fresh case, (*No.* 176 *of* 1862, *Nurro Hurry Mohonto*, 12*th August*, 1862.) See also (*No.* 2042 *of* 1861, *Mussamut Fatima Beebee, Appellant*, 23*rd January*, 1863), and (*No.* 1509 *of* 1863, *Gooroo Dass, Appellant*, 31*st March*, 1864). In the same way, if a defendant set up a peculiar line of defence and fail to prove it, he cannot be permitted to turn round and adopt a fresh defence. (*No.* 3330 *of* 1863, *Woomesh Chunder Bishwass, Appellant*, 8*th June*, 1864.)

Witnesses how to be examined.

The rules for the examination of witnesses are contained in Section 172, &c., of Act VIII. of 1859. The rules are not changed in any respect by the proposed New Code. One long Section is merely split up into several short ones. The rules are so important, that I transcribe the whole Section here, and every Judicial Officer should commit it to memory.

Witnesses to be examined at the hearing of the suit in open Court.

On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court, IN THE PRESENCE AND HEARING, AND UNDER THE PERSONAL DIRECTION AND SUPERINTENDENCE, OF THE JUDGE. In cases *in which an appeal lies* to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, in the language in ordinary use in proceedings before the Court, BY OR IN THE PRESENCE AND UNDER THE PERSONAL DIRECTION AND SUPERINTENDENCE OF THE JUDGE, not ordinarily in the form of question and answer, *but in that of a narrative*; and, when

In what form evidence shall be taken in appealable cases.

completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties to the suit or their pleaders, or such of them as are in attendance, and shall, if necessary, be corrected, *and shall be signed by the Judge.* If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition, as taken down in writing, to be interpreted to him in the language in which it was given. Where all the parties to the suit present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in English, the Judge may so take it down in his own hand. It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his pleader shall require it. If any question put to a witness be objected to by either of the parties or their pleaders, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. *The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination.* In cases in which the evidence is not taken down in writing by the Judge himself, he shall be bound, as the examination of each witness proceeds, TO MAKE A MEMORANDUM OF THE SUBSTANCE OF WHAT SUCH WITNESS DEPOSES, and such

In what case a witness may require his deposition to be interpreted to him.

When evidence may be taken in English.

Objection made to questions.

Memorandum of substance of the evidence in what cases to be made by Judge as each witness is examined.

memorandum shall be written and signed by the Judge with his own hand, and shall accompany the record. *In cases in which an appeal does not lie* to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, SHALL MAKE A MEMORANDUM of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record. If the Judge shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and *in cases not appealable*, shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

In what form evidence shall be taken in cases not appealable.

If Judge be unable to make a memorandum of the evidence, reason of inability to be recorded.

In cases tried before a Deputy Collector, the first of the above methods must be followed, as such cases are all appealable. All Deputy Collectors, then, whether Covenanted or Uncovenanted, whose vernacular is English, must make an English memorandum of the substance of what each witness deposes, and sign it, and their amlah must also write in Bengalee or Hindoostanee the whole of the witnesses' statement. An Uncovenanted Deputy Collector, whose vernacular is Bengalee, may, in a Bengalee District, write down the whole of the witnesses' statement, and then no memorandum will be requisite. This same officer, in a Hindoostanee District, would have to make a memorandum in Bengalee, his own vernacular, while his amlah would take down in Hindoostanee the witnesses' full statement. The same remark, changing what ought to be changed, applies to a Deputy Collector, whose vernacular

Deputy Collectors how to record evidence.

is Hindoostanee. In Behar, he could write the whole evidence, and no memorandum would be required. In Nuddea, he would have to make a Hindoostanee memorandum, while the full evidence would be recorded in Bengalee in his presence by the amlah.

Witness about to leave the jurisdiction

If a witness be about to leave the jurisdiction, or other good and sufficient cause be shown, his examination may be taken forthwith, or on any day that may be fixed, *of which due notice must be given to the parties.*

Oath or affirmation.

All witnesses are examined upon oath or affirmation, or otherwise, according to the provisions of the law for the time being. (Act V. of 1840.)

Parties to suit as witnesses.

A party to a suit, if present, may be examined as a witness, either on his own behalf or on behalf of any other party. If not present, and any other party wish him to be examined, an application, showing sufficient grounds, must be made to the Court. The Court may then either direct his attendance, or cause notice to be given to the party or his pleader to show cause why he should not attend and give evidence. A day will be fixed for showing cause, and in support of such cause, the Court shall receive any declaration in writing of the party, on unstamped paper, if signed and verified in the manner provided for plaints.

Examination-in-chief.

In English Courts of law, the side producing a witness, conducts, through its pleader, what is called the examination-in-chief, *i. e.*, the witness is interrogated as to the points to be proved, leading questions, or questions so framed as to suggest the answer being alone prohibited.

Cross-examination.

The opposite side then cross-examines, when such leading questions may be asked, and the side first

producing the witness may then re-examine, *such re-examination being, however, confined to matter arising on the cross-examination.*

Re-examination.

During each stage the Court may put such questions as it deems fit. In the Mofussil Courts of the Collectors and Deputy Collectors there are few practitioners sufficiently well acquainted with the law of evidence to conduct the examination of a witness properly in any of the above stages. The duty devolves on the Court, and the Judicial Officer, who would seek to elicit evidence to the purpose and to test its truth, must conduct the examination-in-chief, the cross-examination, and the re-examination for himself. He will, however, be often aided by questions from the Mooktiyars, which, though not properly put in many cases, still often point to where valuable information is to be found.

SECTION II.

Of Commissions and Local Enquiries.

The rules as to issuing Commissions to examine absent witnesses have undergone considerable modification in the proposed New Civil Code. I shall first give the law as it stands, and then point out the changes that experience has shown to be necessary.

In what cases Commission to issue.

If a witness reside more than one hundred miles from the place where the Court is held, *or* if from sickness or infirmity he is unable to attend, *or* if he or she be exempted by reason of rank or sex from personal appearance in Court, (see Section 70, Act X,) a Commission may issue, directed, if the witness reside within the jurisdiction of the Court, to any Officer of the Court, or to any subordi-

To whom to issue.

nate Court, or to any othe person or persons the Court may think proper. If the witness reside beyond the jurisdiction of the Court, the Commission shall issue to the Court within whose jurisdiction the witness resides, and which can most conveniently execute it. Under special circumstances, the Commission may issue to any person or persons whom the Court may think fit to appoint. If the witness to be examined reside within the jurisdiction of the High Court, the Commission will issue to the Court of Small Causes.

Witness how to be examined.

The Court issuing the Commission will direct how the witness is to be examined, whether on written interrogatories, or otherwise; and shall give such other directions as may appear reasonable and just.

Return of Commission.

The Commission having been executed, shall be returned with the deposition of the witness. But no deposition taken under a Commission, shall be read in evidence *without the consent* of the party against whom the same may be offered, *unless it be proved that the deponent* is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, *or unless* the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

New Code.

Under the proposed New Code, now before the Council, no person shall be bound to attend in person to give evidence, if he reside more than *fifty miles* from the Court, unless the Court *specially*

order his attendance. The reasons of such an order, if passed, must be recorded. In no case can a witness residing more than *one hundred miles* from Court be compelled to attend. A witness whose evidence is required on a question relating to the law of religion, may be examined by Commission, and persons exempted from attendance in Court by reason of rank or sex, must be exempted by some law for the time being in force. A Commission may also issue to an Officer of the Court to examine a *prisoner in Jail* on Civil or Criminal process. The examination shall be conducted inside the Jail in presence of the parties or their agents, the Officer in charge of the Jail, or some one appointed by him being also present. If the Jail be in another District, the Commission may be to a Court within whose jurisdiction the Jail is situate.

Local enquiries or investigations.

Section 73 of Act X. enacts that the Collector (or Deputy Collector) may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made *by any Officer subordinate to him, or by any other Officer of Government, with the consent of the authority to whom such Officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.* The provisions of the law for the time being in force relative to local enquiries by Ameens or Commissioners under orders of the Civil Courts, shall apply to any local enquiry made by any Officer under this Section, and, as far as they are applicable, to enquiries made by the Collector (or Deputy Collector) in person. In the latter case, the Collector (or Deputy Collector) after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit. Local enquiries are generally made by the Civil Court Ameens appointed under Act XII. of 1856. The

rules for such investigations now contained in Act VIII. are not altered by the proposed New Civil Code. A Commission should issue to the person appointed to conduct the local investigation. He has power to examine the parties themselves and any witnesses they may produce; also to call for and examine documents and other papers relevant to the subject of inquiry. Having made such local inspection as he may think necessary, he will forward a report in writing, together with the depositions taken, to the Court. The report and depositions shall be taken, as evidence in the suit, and shall form part of the record, but it shall be Competent to the Court or to the parties to the suit, or any of them, *with the permission of the Court,* to examine the Commissioner personally in open Court, touching any of the matters referred to him or mentioned in the report, or the manner in which he may have conducted the investigation. The expenses of the local enquiry must be lodged before the Commission is issued. These expenses are calculated according to the number of days the enquiry may be supposed likely to occupy, *at three rupees per diem,* with travelling allowance for the Ameen, together with the pay of one or more peons to attend him. The cost of postage of the Ameen's reports must also be paid. If the amount lodged on the rough calculation first made be more than is required, the excess must be at once refunded. Before orders are issued for an enquiry by an Ameen, the exact nature of the enquiry to be held, the means to which the Ameen is to have recourse in making it, and the time it should occupy, must be carefully considered and recorded. *The instructions given to an Ameen for a local enquiry should be careful and precise,* and such local enquries should be very sparingly resorted to. They are not often necessary for the decision of cases under Act X. There is little that can be proved before an Ameen

Expenses.

in the Mofussil, that cannot be proved before the Collector in Court. In cases of disputed measurement alone, such enquiries are perhaps necessary. The Board of Revenue have prescribed some of the above rules, and have also called attention to the fact that a Civil Court Ameen need not necessarily be deputed; that any Officer subordinate to the Collector may be sent. His actual travelling allowance, and such remuneration as may seem reasonable, *not exceeding three rupees per day*, may be paid him.

SECTION III.

The Decree.

Having examined the witnesses, and perused the documents and, it may be, the evidence taken under Commission, or the report made after a local enquiry, the Collector or Deputy Collector will make his decree. Section 15 of Act VI. (B. C.) of 1862 is as follows:—"The Collector (or Deputy Collector) shall pronounce judgment in all cases tried under this Act or under Act X. of 1859 in open Court. *The judgment shall be written in the vernacular language of the Collector or Deputy Collector, and shall contain the reasons for the same, and shall be dated and signed by the Collector (or Deputy Collector) at the time when it is pronounced.* Provided that if the vernacular language of the Collector (or Deputy Collector) be not English, and he be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English."

Points to be attended to in writing a decree.

There is no part of a Judicial Officer's work from which his capability or otherwise can be better inferred than from his written

decision. The importance of this duty can be scarcely over-estimated, and it is a duty too often carelessly performed. An order like "mokuddama decree," that does not state what is decreed or what specific remedy has been awarded, is very easily written; but the result is, that the *amlah* are the persons who draw up the actual decree, and insert in it, or exclude from it, such items as they please, or are paid for. I quote the following useful hints from Mr. Macpherson's Work on Civil Procedure:—

Decree must show that the investigation has been complete.

"The decree ought to enumerate all the material allegations and pleas on either side; it ought to show that the Judge has duly enquired into their truth, by calling for evidence where necessary, and by full consideration of the evidence laid before him; and he must record whether they have been substantiated or not; so that it may appear clearly that no material allegation or plea has been overlooked by the Court in forming its judgment; and costs ought not to be awarded against a successful party without an explicit statement of the reason. If the judgment proceeds in any degree on the consent of the parties, or of either party, or of the pleaders, that consent must be expressly stated in the decree.

Consent of parties.

Finding on evidence to be distinctly stated.

"The Court must record its opinion positively as to the genuineness of all documentary evidence laid before it, in order that it may appear distinctly whether such evidence was admitted or rejected, and that there may be no doubt as to the grounds upon which the Court has proceeded. The facts of every kind upon which the Court proceeds, must be positively found, and their truth must not be left in doubt by the language of the decree.

"The decision must be founded on some intelligible principle, and is not to be a mere conjecture or a compromise to escape from a difficulty. *It must not be founded upon any matter not placed on the record.* The Judge must decide according to the evidence before him, and is not bound to adopt the views of his official superior expressed in a different suit.

Grounds of decision.

"The judgment ought not to contain any merely speculative opinion or an extra-judicial suggestion, such as an intimation that costs which it orders a man to pay, may be reclaimed by him in another suit.

Extra-judicial matter.

"An entire claim ought not to be dismissed because part of it cannot be supported. Although some parties may have been improperly made defendants, yet the case ought to be decided on its merits as regards those who have been properly made defendants. The Judge is to give or to withhold wholly, or in part, that which is sought by the plaintiff, *but is not to give him what he does not ask for.*

The ordering part of the decree must be definite and capable of being carried into execution. It should specify distinctly the remedy awarded, and should not direct anything that is illusory or impossible. The order should be complete in itself, and should not necessitate a reference to the plaint or other paper in order to be understood."

Under the denomination of costs, says Mr. Macpherson, are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes; or of procuring copies of documents, fees of pleaders, charges of witnesses, and expenses of Commissioners, either in taking evidence or in local investigations. Fees to Agents or

Costs.

Mookhtiyars were not formerly chargeable as costs in rent cases, but by Section 14, Act VI. (B. C) of 1862, they were made so chargeable. They must not exceed the rate of fees chargeable under Section 7, Act I. of 1846.

This Section enacts that, *when fees are charged as costs*, they must not exceed the scale in the margin contained in Section 25, Regulation XXVII. of 1814. Parties are, however, at liberty to make what private agreement as to the remuneration of their pleaders they please. It will be seen from the above scale that *5 per cent. on the sum recovered will be the usual rate awarded to Agents in rent suits,* as few claims exceed Rs. 5,000. When the fees of an Agent or Pleader are awarded as part of the costs, interest runs upon them from the date of the decree as well as upon other costs. The Court has absolute power to award costs or not, but this power must be exercised judiciously. As a general rule, costs should be awarded to the successful party, on the principle that the party found to be in the wrong should pay the expense to which the other party has been put in order to recover his just rights. It must also be observed that the costs should be only on the portion of the claim established. If a Zemindar sue for 20 rupees and only recover 10 rupees, he well only get costs on 10 rupees. If costs be not awarded to the successful party, the reason should be recorded.

FEES OF AGENTS OR MOOKHTIYARS.

If the amount or value of the claim do not exceed Rs. 5,000, 5 per cent.

Above Rs. 5,000 and below Rs. 20,000, 5 per cent. on 5,000, and 2 per cent. on the remainder.

Above Rs. 20,000 and below 50,000, on 20,000 as above, and on the remainder one per cent.

Above Rs. 50,000 and below 80,000, on 50,000 as above, and on the remainder 8 annas per cent.

Above 80,000, the fee shall be 1,000 Rs., which it is never to exceed.

Fractions of rupees to be rejected in calculating.

General rule as to awarding costs.

CHAPTER XXI.

Of the Execution of Decrees.

SECTION I.

General Rules.

Process of execution may be issued against either the person or property of a judgment-debtor, but *process shall not be issued simultaneously against both person and property.* It may be issued on the oral application of the judgment-creditor, his agent, or Mookhtiyar, made at the time the judgment is pronounced or *thereafter,* upon the *written application* of the same presented to the Court by which the judgment was given. (Section 17, Act VI. (B.C.) of 1862). Every warrant of execution shall bear the date of signature by the Collector or Deputy Collector, and shall continue in force for such period, as may be directed, *not exceeding sixty days.* (Section 88). After the expiration of a previous warrant, second and successive warrants may be issued. (Section 89). If a period of *more than one year* have elapsed since the date of decree, or since the last application for execution, no process of execution can be issued without previous notice to the party against whom execution is applied for. (Section 96). A similar notice is requisite when *execution against an heir or other representative of a deceased person is applied for.* (Section 91). No process of execution of any description whatsoever shall be issued *after the lapse of three years* from the date of such judgment, unless the judgment be for a sum exceeding 500 rupees, in which case the period within which execution may be applied for

Application how to be made.

Warrant how long to continue in force.

Notice to show cause.

shall be regulated by the rules of the Civil Courts. (Section 92). These rules are found in Section 20, Act XIV. of 1853. No process of execution can issue, unless, *within the three years next preceding the application for execution, some proceeding have been taken to enforce the decree.* If the sum be less than 500 rupees, then the three years are counted from the date of decree; if more than 500 rupees, the three years are counted from the last step (if any) taken to enforce the decree. From *No.* 81 *of* 1859, *Noonoolol Misser and others, Petitioners, 28th July,* 1862, (Summary Appeals) it would appear that an order disallowing execution under Section 92 is not appealable. (See also Section 151, Act X.) No suit can be maintained in a Civil Court to enforce a decree of a Revenue Court, which the latter Court has refused to execute upon the ground of its having been satisfied. (*Anund Moyee Dasee, Appellant, 3rd June,* 1863). I question, if it would be entertained in any case, if the refusal were under Section 92 of Act X.

Liability of surety of judgment-debtor.

If a judgment-debtor have given security for his appearance, and be not present when judgment is pronounced, and his surety fail to deliver him, process of execution may be taken out against the surety just as against the debtor. If the decree be for the delivery of papers or accounts, execution may be taken out in the same manner for the sum due under the surety-bond.

Miscellaneous points

In the case of an appeal, the date of the decree means the date of the decree of the Appellate Court. If the decree be against several debtors, execution may be taken out against any one or more of them. If the name of a defendant or the order for costs be omitted in the decree, though clearly by mistake, the Court must be moved to amend the decree.

Execution cannot s u e as if the mistake had not occurred. A decree-holder may transfer a decree by endorsement or deed of transfer, but a stamp is required as for a conveyance. The transferree obtains only what rights the original decree-holder possessed, while the latter retains all his liabilities.

Property exempt from execution.

The following property cannot be taken in execution of a decree :—Implements of agriculture, military pay or pensions granted by Government, land or profits forming the endowment of a Mahomedan or Hindoo temple.

Section II.

Of Execution against the Person.

If oral application for arrest be made when the decree is passed, and the judgment-debtor be present, he may be at once arrested. At any subsequent period, on an application *in writing*, a warrant will issue. The Officer charged with the execution of the warrant must bring the judgment-debtor with all convenient speed before the Collector or Deputy Collector. If he cannot then deposit in Court the full amount, or make an arrangement for the payment, or satisfy the Collector or Deputy Collector that he has no present means of paying the debt, he will be confined in the Civil Jail for a period—

Not exceeding three calendar months	When amount decreed, exclusive of costs, does not exceed	Rs. 50
Not exceeding six calendar months	When amount decreed, exclusive of costs, does not exceed	„ 500

Not exceeding two years in any other case.

If the decree be *for the delivery of papers or accounts*, and the papers or accounts be not delivered, the period of imprisonment may be up to, but may not exceed, *six calendar months*. (Section 93). No person can be imprisoned a second time under the same judgment, but the imprisonment will not exempt his property from liability to be taken in execution, unless the amount due under the decree do not exceed *one hundred rupees*, in which case the Collector or Deputy Collector "*may*" (not "*shall*") declare such discharged person absolved from further liability under the decree. (Section 94.)

Diet money.

Any person applying for a warrant of arrest while the case is pending, or in execution, must deposit in Court *at the time of issue of the warrant* diet-money for a month of thirty days at such rate as may be directed by the Court. This rate is not to exceed *two annas per day*. For *special reasons* it may be increased, but must in no case exceed *four annas per day*. (Section 95). Payment at the same rate is to be made before the commencement of each succeeding month, failing which the prisoner will be discharged. (Section 96). *Diet money counts as costs*. Money lodged and not spent, must be returned to the party who deposited it. (Section 97).

Protection from arrest.

Persons in attendance on a Criminal Court on bail to answer to a Criminal charge, and persons in attendance on a Collector to defend a suit or claim pending before that Officer, are protected from arrest under Civil processes. The protection will last only so long as the party is in actual attendance, or coming to, or returning from, the Court by the direct road and without undue delay.

SECTION III.

Of the Execution against Moveable Property.

Moveable property required to be seized in execution, must be described, if practicable, in a list to be furnished by the judgment-creditor. If, however, he cannot furnish such a list, he may apply for a *general attachment* of the debtor's effects to the amount of the decree. The property must, in any case, be pointed out to the Officer charged with the execution of the decree, (Section 87), who must then prepare a list of the property pointed out. A proclamation, specifying the day of sale, together with a copy of this list, must then be published *at the intended place of sale, at the debtor's residence, and in the Collector's Office.* (Section 98.) The sale must not be made till the expiry of *ten days,* exclusive of the day of seizure. Till the day of sale, the property shall be deposited in some fit place, or it may remain in the custody of some fit person approved by the Officer executing the writ. (Section 99). The sale shall be conducted in the manner prescribed for the sale of distrained property. (See above, Chapter VIII). If, before the day of sale, a third party claim the property seized, he shall be examined on oath or affirmation, or otherwise, and *if there appear sufficient reason,* the sale may be stayed, (Section 100), and the Collector or Deputy Collector shall adjudicate upon such claim, being guided, as far as possible, by the rules in the Act. (Section 101.) If the claimant fail to establish his claim, he will be liable to pay compensation to the judgment-creditor for any damage suffered by postponement of the sale. (Section 102). There is *no appeal* from the decision

List to be furnished.

Proclamation of sale.

Custody of property.

Mode of sale.

Intervenor.

of the Collector or Deputy Collector. But a suit may be brought *within one year* in the Civil Court. Such suit can only be for damages, and not for the recovery of the specific property sold. (Section 103.)

Sale not voidable for irregularity.

No irregularity in publishing or conducting a sale shall vitiate such sale, but a suit for damages will lie *within one year.*

Section IV.

Execution against Immoveable Property.

If decree be for arrear of rent of a saleable under-tenure.

If the decree be for an arrear of rent due in respect of an under-tenure, which, by the title deeds or the custom of the country, is transferable by sale, application for the sale of this tenure may be made, and it will be sold according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, contained in any law for the time being in force. (Section 105.) This law is Act VIII. of 1835. The rules are as follows :—

Mode of sale.

Sales must be made in public Cutcherry by the Collector or Deputy Collector, or Assistant Collector invested by Government with the powers of a Deputy Collector. Each lot is to be sold to the highest bidder. Any one, except the actual defaulter, may bid. *Fifteen per cent.* of the purchase money must be paid immediately the lot is knocked down. A bid may be refused by the Officer conducting the sale, unless he has assurance that the earnest money will be deposited within two hours. *If not deposited within two hours, the lot will be resold the same day.* The balance of the purchase money must be paid by noon of the *eighth day* from that of sale. If not paid, the lot will be *resold on the following day at the risk of the first*

purchaser, who will forfeit the advance of 15 per cent. and be, moreover, liable for the difference (if any) between the proceeds of the first and second sale. This difference may be levied by the process for the execution of the decrees of the Civil Court.

Notice of sale.

By Section 2, Act VIII. of 1835, *ten days' notice* of such sales must be given by advertisement, to be stuck up at the Cutcherry of the Zillah Court or Local Adawlut, and that of the Collector. In Circular No. 8 of 1861, of the Board of Revenue, attention is drawn to the fact that, after notice given as above, no attachment and no separate or local advertisement is necessary.

Restrictions to the application for sale of under-tenures.

No application can be received for the sale of an under-tenure *for its own arrears*, if a warrant of execution has previously issued against the person or moveable property of the judgment-debtor, *so long as such warrant is in force*, (Section 105). If the decree be for a share of the rent in favour of a sharer in a joint undivided estate within which the under-tenure is situate, an application for sale shall not be received *until execution have been first taken out against any moveable property* of the judgment-debtor, to be found in the District in which the suit was instituted, and the sale of such property have proved insufficient to satisfy the decree. (Section 108).

If sale of under-tenure be insufficient to satisfy the decree.

If, after sale of an under-tenure, in any of the above cases any portion of the amount decreed remain due, execution may be taken out against any other property, moveable or immoveable, of the judgment-debtor. (Section 105). A saleable under-tenure must be held to be burdened with, and hypothecated for, the rents due on it, and the landlord's lien is good against a private purchaser, so long as any rent is in arrear. (*No.* 359 *of* 1864,

Mr. T. J. Kenny, Appellant, 30th July, 1864). It will be saleable for arrears of *one or more years.* (*No.* 1659 *of* 1863, *Doorga Pursad Bhose, Appellant, 14th April,* 1864). A zemindar should sell the *tenure* and not the ryot's *rights and interests* therein. Any other prior lien is valueless so long as the rent decreed to be in arrear remains unpaid. (*No.* 3043 *of* 1863, *Maharajah Satish Chunder Roy Bahadoor, Appellant, 27th June,* 1864).

Intervener.

If, before the day of sale, a third party appear and claim to be the proprietor of the under-tenure, the Collector or Deputy Collector will examine him in the usual way; and if he see sufficient reason, *and the claimant deposit or give security for the amount of the decree,* the sale may be stayed and the claim adjudicated upon. *No transfer of the under-tenure, required by any law to be registered in the Zemindaree Sherishteh, will be recognized unless so registered, or unless sufficient cause for non-registration be shown.* The decision of the Collector or Deputy Collector is not subject to appeal, but a suit may be brought within *one year* in the Civil Court by a dissatisfied party to establish his right. I may remark that the law contains no provision for awarding compensation, if a party intervene vexationsly with respect to an under-tenure.

Setting aside a sale.

No action by the tenant himself will lie in the Civil Court to set aside a sale of an under-tenure sold in execution of a decree for rent accruing on that under-tenure under Section 105. The Collector's order is final. (*No.* 70 *of* 1863, *Ruttunmonee Dasee, Appellant, 16th March,* 1864). If the sale have been in execution of an *ex parte decree, the fifteen days* within which, under Section 58, an application for revival of the suit can be made, will be counted *from the date of sale.* (*No.* 580 *of* 1863, *Jotendra Mohun Thákúr, Appellant, 3rd May,* 1864).

This is a most important ruling, entirely obviating the injustice that might ensue if an *ex-parte* decree were obtained by fraud, and an under-tenure sold in execution.

If decree be for payment of money.

It will not escape notice that the above refers only to the case of a decree for arrears due in respect of the under-tenure, for sale of which application is made. I now come to the execution of *any decree for the payment of money* under Act X. against immoveable property. Execution against the judgment debtor's immoveable property can be applied for, *only if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted.* (Section 109.)

Execution against a house or other building.

If the immoveable property be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the same rules will apply, for which see above, Section III. The purchaser of a house should be put in possession by the Court, and not referred to a regular suit to obtain possession. (*No.* 438 *of* 1863, *R. Solano, Appellant,* 19*th April,* 1864.)

Execution against a saleable under-tenure.

If the property be a saleable under-tenure, it shall be sold under the provisions of the law, for the time being in force, applicable to the *sale of such under-tenures for demands other than those of arrears of rent due in respect thereof.* (Section 110.) This law is found in Sections 248 to 264 of Act VIII. of 1859. A proclamation of sale, specifying the time and place of sale and the property to be sold, must be made on the spot when the property is attached by beat of drum. A written notification to the same effect must be affixed in the Court-house, of the Judge who ordered the sale, and in some conspicuous spot of the town or village in which the attachment may have taken place. Such attachment will have been made on

the application of the judgment-creditor by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, any alienation after such order being null and void. The above notification must also be affixed in the Office of the Collector and in the principal Civil Court of the District. *The sale must not take place till after thirty days* from the publication of the notification. The sale is made by public auction. *Twenty-five per cent.* of the bid must be deposited when the lot is knocked down; otherwise it will be again put up and sold. The full amount of the purchase money must be paid before *sunset of the fifteenth day* from that of sale. In default of payment, the deposit will be forfeited to Government, and the lot shall be sold at the risk of the defaulting purchaser, from whom any difference between the proceeds of the first and second sales shall be leviable under the rules for enforcing the decree of the Civil Courts. A resale must be made exactly as an original sale, after a fresh notification. Within *thirty days* from date of sale, application to set aside the sale may be made on the ground of irregularity in publishing or conducting the sale, but only in case the applicant has sustained substantial injury by such irregularity, in which case the sale may be set aside. *The order to set aside a sale is final. The order confirming a sale is open to appeal.* Delivery of the property is made by affixing a copy of the certificate of sale in some conspicuous place on the land, and proclaiming it to the ryots or other occupants of the land. The above rules are not changed by the proposed new Civil Code.

Execution against an estate, or share of an estate.

If the property be an estate, or share of an estate, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue, (Section 110), that is, under

Act XI. of 1859. (See Section 5, Clause 4 of this Act).

Intervener.

If, before the day of sale, in any of the above three cases, a third party appear and claim the immoveable property, his claim will be dealt with by the Collector or Deputy Collector. The order passed is not appealable, but a suit may be brought within *one year* in the Civil Court by a dissatisfied intervening party to establish his right. There is no provision in the law for taking security, if the sale be stayed, or for awarding compensation, if the claim appear groundless or vexatious.

What tenures are transferable.

Ryot's jote.—Right of occupancy.

A ryot's interest or good-will of his jote, whatever that may be, is saleable in execution of a decree. (Sudder Dewanny Reports for 1857, page 1483). In *No.* 1022 *of* 1864, *Jagat Chunder Roy, Appellant,* 15*th September,* 1864, it was laid down that, without doubt, occupancy tenures of the well established and well known character of *Nim Hawalas* (even though they may not comprise right of holding at a fixed rent), and all other such rights of occupancy established by the ancient prescription and custom of the country, are transferable tenures. The tenure in this case had existed for 50 years. But what tenures are transferable in a particular district, and whether any tenure in a particular district is transferable without the landlord's consent, can only be settled by enquiry into the local custom of the district. There is no general law or custom applicable throughout the country. (*No.* 412 *of* 1864, *Joy Kishen Mookerjee, Appellant,* 21*st September,* 1864.) In *No.* 314 *of* 1864, *Horro Mohun Mookerjee, Appellant,* 4*th August,* 1864, the following useful remarks are made:—"In is not essential that a ryot should have a *Mokurreree* jote it order to dispose of his rights in a holding. There are various descriptions of tenures other than *Mokurreree,* which

can be sold, and are sold every day. The Hawalahs and Nim Hawalahs of Backergunge and the Jotes of Rungpore for example. Neither of these holdings are, properly speaking, *Mokurreree*, but they are *Mourusee*, and contain hereditary rights, which are and have always been considered transferable." *A right of occupancy is transferable*, but it is not one of those immediate transferable interests mentioned in Section 27 of Act X. of 1859, which the Zemindar is required to register. (*No.* 753 *of* 1864, *Mussamat Táráméní Dási, Appellant, 8th September*, 1864.) The purchaser of an under-tenure sold in execution of a decree, who never got possession, cannot sue for possession under Clause 6, Section 23, Act X. of 1859, as he has never been *illegally ejected*. (*No.* 320 *of* 1864, *Jagabandhu Malik, Appellant*, 15*th August*, 1864.) He should have applied to the Court, under whose decree he purchased, to put him in possesion. The ruling given above (*No.* 580 *of* 1863, *Jotendra Mohun Tákúr, Appellant*, 3*rd May*, 1864) applies to sales under Section 110 also. In the case of an *ex-parte* decree, the fifteen days (Section 58) will count from date of sale.

CHAPTER XXII.

Of Appeals, Regular and Special, and Review of Judgment.

Regular appeal.

A regular appeal is made from the decision of the Court deciding a case in the first instance; and may be made on the facts as well as on the law of the case. The party appealing is dissatisfied with the findings on the issues either of law or fact. A

Special appeal.

special appeal is made from the decision, on appeal, of the Court to which a regular appeal lies, and can only be made on the ground of that decision being contrary to law, or usage having the force of law, or on the ground of substantial error or defect in law in the

procedure or investigation of the case, which may have produced error or defect in the decision of the case on the merits.

Two appellate authorities under Act X.

In certain classes of cases decided under Act X., the appeal lies from the decision of a Deputy Collector to the Collector, or from the decision of the Collector to the Commissioner. In other classes, a regular appeal from the decision of a Deputy Collector lies to the Civil Judge, and a special appeal from this Officer to the High Court.

Appeal from Deputy Collector to Collector, or from the Collector to the Commissioner.

FIRST. *All orders passed by a Deputy Collector, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof, or orders passed after decree and relating to the execution thereof, are appealable to the Collector.* The same orders, when first passed by a Collector, are appealable to the Commissioner, (Section 151); and these are the only orders regularly appealable to a Commissioner.

SECOND. In suits for damages for illegal exaction of rent or unauthorized cesses or imports, or on account of the refusal of receipts or extortion of rent by confinement or duress, in suits for arrears of rent, in suits connected with distraint, and in suits against agents, *when the value in dispute does not exceed one hundred rupees, and when no question of right to enhance rent, or question relating to title to land or to some interest in land is involved,* a regular appeal lies from the decision of a Deputy Collector to the Collector. (Section 155).

Appeals to the Judge or to the High Court.

In all other cases, except the above, the regular appeal lies from the decision of a Collector or Deputy Collector to the Judge. If the value in dispute exceed 5,000 Rupees, the regular appeal must be made to the High Court. (Section 160).

There is no appeal when suits of the description above

When there is no appeal.

enumerated in the second class of orders appealable from a Deputy Collector to the Collector, are tried in the first instance by a Collector. (Section 153). There is also no appeal otherwise than as expressly provided by Act X., from any judgment of a Collector or Deputy Collector, or from any order of the same passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof. (Section 151). *There is also no special appeal from the order of a Collector or Commissioner passed in regular appeal.* But the Commissioner, in the former case, and the Board of Revenue, in the latter case, have the power of calling for any case and passing such orders as they may think proper. (Section 152).

Appeals in *ex-parte* cases.

Formerly, no appeal was allowed in cases decided *ex-parte* against a defendant who had not appeared, or when judgment was given by default against an absent plaintiff. But if a plaintiff, *within fifteen days from the date of the decree,* or a defendant, *within fifteen days after any process for enforcing the judgment had been executed,* appeared and showed good and sufficient cause for his previous non-appearance, and satisfied the Court that there had been a failure of justice, the Court, upon such terms as to costs or otherwise as it might deem fit, might revive the suit and alter or rescind the decree. *But no decree can be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.* (Section 58). Now, however, by Section 12, Act VI. (B.C.) of 1862, though no appeal will lie, if such an application be admitted and the former decree set aside, yet *in all appealable cases,* in which the application for revival is rejected, an appeal lies from the order of rejection to the tribunal to which the final decision in the suit would be appealable. The appeal must be preferred within the usual time, and the usual stamp must be used.

In suits in which the judgment of the Collector is final, the Collector may, upon the application of either party, to be made within thirty days from the date of the decision, order a rehearing, *upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce at the trial.* (Section 154.)

When a re-hearing may be granted.

Every appeal against the order of a Collector must be presented to the Commissioner within *thirty days,* and every appeal against the order of a Deputy Collector shall be presented to the Collector within *fifteen days* from the date of the order (Section 152). From the calculation of time must be excluded *the time requisite for procuring a copy of the decree.* This time is ascertained from the date of the petition for obtaining the copy, and the date which the Collector or Deputy Collector writes on the copy, when it is ready, whether the applicant be present to receive it or not. The Collector fixes a day for the hearing of the appeal, notice of which must be served on the respondent in the manner prescribed for the service of summons. On the day fixed for hearing, or any other day to which the hearing may be adjourned, if the appellant do not appear in person or by agent, the appeal shall be dismissed for default. If the appellant appear, and the respondent do not appear in person or by an agent, the appeal shall be heard *ex-parte.* (Section 157). In the case of an appeal dismissed for default, the appellant may, within fifteen days, apply to the Collector for a *re-admission of the appeal,* and a re-admission may be granted, if it be proved that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing. (Section 158.) *There is no provision for the re-admission, on the motion of the respondent, of an appeal decided ex-parte.* Judgment in appeal is to be delivered in the manner

Rules for Collectors and Commissioners' appeals.

prescribed for original suits. (Section 159.)

Rules for appeals to the Judge.

Appeals to the Judge are regulated by the rules of the Civil Court. (Section 161.) The appeal must be preferred, whether from the order of a Collector or Deputy Collector, *within thirty days*, making the same allowance as before for time necessary to obtain a copy of the decree. Either the Appellate or the Lower Court *may*, on sufficient cause shewn, stay execution pending the appeal, requiring security from the party against whom the decree was passed. The Lower Court, when ordering execution of a decree appealed against, *may* require security from the decree-holder. Notice of the day fixed for hearing the appeal must be given to the respondent in the manner provided for service of summons. If, on the day of hearing, the appellant do not appear in person or by a pleader, the appeal shall be dismissed for default, but application may be made *within thirty days* for re-admission of the appeal, on the ground of the appellant having been prevented by sufficient cause from appearing on the day of hearing. If the appellant appear, and the respondent do not appear in person or by a pleader, the appeal will be heard *ex-parte*. There is no provision for a re-admission in this case.

The judgment of the Appellate Court must be on the merits only; and upon the hearing of the appeal, the respondent may take any objection to the decision of the Lower Court, which he might have taken if he had preferred a separate appeal from such decision.

When a case may be remanded by Appellate Court.

If the Lower Court shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Appellate Court essential to the rights of the parties, and the decree of the Lower Court upon such preliminary point shall be reversed by the decree in appeal, the Appellate Court may, if it think right, *remand the*

case, together with a copy of the decree in appeal, to the Lower Court, with directions to restore the suit to its original number in the Register, and proceed to investigate the merits of the case, and pass a decree therein.

Power to remand limited as above.

It shall not be competent to the Appellate Court to remand a case for a second decision by the Lower Court, except as provided in the last preceding Section.

Trial of issues by Lower Court on reference from Appellate Court.

If the Lower Court shall have omitted to raise or try any issue, or to determine any question of fact, which shall appear to the Appellate Court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question of fact, the Appellate Court may frame an issue or issues for trial by the Lower Court, and may refer the same to the Lower Court for trial. Thereupon the Lower Court shall proceed to try such issue or issues, and shall return to the Appellate Court its finding thereon, together with the evidence. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, file a memorandum of any objection to the finding; and, after the expiration of the period so fixed, the Appellate Court shall proceed to determine the appeal.

Additional evidence.

It is not competent to parties, in appeal, to produce additional evidence; but where competent evidence has been refused by the Lower Court, or for other good cause *to be recorded,* the Appellate Court may allow additional evidence to be admitted. The Lower Court may be required to take this evidence, or the Appellate Court may take it. The evidence must, however, be confined to certain recorded points.

The above rules are not changed by anything in the proposed new Civil Code.

Some points worth noting.

In the preceding pages have been given several precedents relating to appeals in particular classes of cases. I now give some further points already raised and decided. An appeal may be for costs alone. A person may appeal, who is the transferee of the rights of the judgment-creditor or debtor. If the period of appeal expire on a Sunday, or Holiday, the petition of appeal may be presented on the next open Court day. A person, who intervened and was heard in the Lower Court, is entitled to be heard in the Appellate Court. But a person, not made a party to the Suit in the Lower Court, cannot appeal. (*No.* 2025, *Mohendro Chunder Ghose, Appellant,* 28*th April,* 1863.) Generally speaking, the Appellate Court will not entertain any point not raised in the Court below,—(*No.* 76 *of* 1862, *Sheikh Sufee, Appellant,* 30*th July* 1862), unless it be an important legal point. In *No.* 2663 *of* 1863, *Runee Suvarnamayi, Appellant,* 30*th July,* 1864, it was laid down "that the Lower Appellate Court should not, as an ordinary rule, except as to jurisdiction, take up points in bar not taken in the first Court, or not urged on the trial there." See also *(No.* 909 *of* 1864, *Ishwar Chunder Ghosal, Appellant,* 20*th August,* 1864.) An appeal will lie by a party from a decision which is in some points against him, though the decree itself be in his favour. (*No.* 1914 *of* 1861, *Maharanee Inderjeet Koonwur, Appellant,* 19*th February,* 1863.) An appeal may be decreed on the appeal of one of several defendants, whose interests are identical, or whose liabilities are joint. (*No.* 2959 *of* 1862, *Ram Chunder Chowdry, Appellant,* 25*th September,* 1863.) *(No.* 1674 *of* 1861, *Luckeekant Sen, Appellant,* 13*th February,* 1863.) An Appellate Court may compel the attendance of either party

as a witness, and in case of recusancy pass judgment against him. (*No.* 1775 *of* 1862, *Juggernauth Persaud, Appellant,* 22*nd April,* 1863.) The appeal from the order of an Assistant or Deputy Collector (Covenanted or Uncovenanted) in suits in which the amount in dispute does not exceed one hundred rupees, and which do not involve any question of title, lies to the Collector, and not to the Judge. (*No.* 1176 *of* 1860, *Chunder Koomar Mitter, Appellant,* 22*nd August,* 1861.) Limitation cannot be pleaded for the first time orally in appeal. (*No.* 32 *of* 1863, *the Collector of Rajshahye and another, Appellants,* 26*th January,* 1864.) The reversal by a Judge of the whole, when plaintiff, who had obtained a partial decree, appealed, and defendants as respondents raised no objections, was incorrect. (*No.* 347 *of* 1862, *Hem Chunder, Appellant,* 4*th March,* 1864.) An Appellate Court cannot reject an appeal on account of the non-verification of a statement admitted by the Lower Court. (*No.* 1090 *of* 1864, *Mr. G. Clarke, Appellant,* 17*h September,* 1864.)

Special appeals.

As a rule, in special appeal, the Court will not interfere with the findings of fact of the Lower Court, but only with the application of the law to these facts. If, however, the issues of fact have been wrongly fixed, so that the proper facts of the case, to which the law is to be applied, have not been elicited, the higher Court will interfere for the purpose of having the issues of fact settled properly, to which the law may be applied afterwards.

Judgments passed by a Zillah Judge, in appeal, under Section 160 of Act X. of 1859, are open to special appeal, *No.* 861 *of* 1863, *Hullodhur Bishwas, Tehsildar, Appellant,* 30*th March,* 1861. The appeal must be preferred *within thirty days.*

The misconstruction of a written document forming the basis of a plaintiff's claim, or a defendant's plea, is a valid ground of special appeal, (Section 392, Act VIII. of 1859.) (*No.* 1569 *of* 1861, *Rajah Pran Kishen Singh Surma, Appellant,* 1*st October*, 1861.) (*No.* 1603 *of* 1861, *Ramee Kamet, Appellant,* 20*th November*, 1862.) The *credibility* of documents, however, is a question of fact, and will not form a ground of special appeal. (*No.* 1063 *of* 1863, *Hurro Kishore Chowdry, Appellant,* 16*th February*, 1864.) In the same way the sufficiency and credibility of evidence is not a ground of special appeal. (*No.* 2885 *of* 1862, *Baboo Brojo Behary Lall, Appellant,* 5*th January*, 1864.) Neither is the refusal of additional evidence by the Lower Appellate Court. (*No.* 2141 *of* 1861, *J. Beckwith, Appellant,* 13*th February*, 1863.) But the higher Appellate Court will interfere on special appeal when the Lower Court has decided on no evidence, or on what is not legal evidence. (*No.* 1916 *of* 1861, *Ram Soonder Sirkar Gomashtah, Appellant,* 3*rd March*, (1863.) A plea of want of jurisdiction, though not raised in the Lower Court, would be received in special appeal, as acts done without jurisdiction have no legal effect whatever. (*No.* 98 *of* 1862, *Gooroo Persad Roy and others, Appellants,* 5*th August*, (1862.) Receipts not duly stamped having been admitted by a Lower Court, this will not be a ground of interference in special appeal. (*No.* 260 *of* 1863, *Kyemoolah and another, Appellants,* 5*th August*, 1863.) The respondent may, upon the hearing of a special appeal, take any objection, which he might have taken, had he preferred a separate special appeal. (*No.* 1607 *of* 1862, *Isshur Ghose, Appellant,* 24*th September*, 1862.) A special appeal, on the ground that the Court decided without summoning Appellant's witnesses, when he had failed to secure

their attendance on the day fixed for trial, was rejected. (*No.* 1845 *of* 1863, *Tilok Chund Sahoo, Appellant,* 17*th February,* (1864.)

CHAPTER XXIII.

MISCELLANEOUS.

Stamps.

In suits for the recovery of arrears of Government revenue or rent of land *paying revenue to Government,* or of money in the hands of an agent of such land, the statement of claim shall be written on paper, bearing a stamp of *one-fourth* the value prescribed for suits instituted in the Civil Courts, or according to the scale noted in the margin. In all other suits relating to lands *paying revenue to Government,* the statement of claim shall be written on paper bearing a stamp of the value *eight annas. As, however, in case of an appeal to the Judge the stamp on the petition of appeal is regulated by the Civil Court rules,* the valuation of the suit must always be given in cases in which the appeal lies to the Judge. The following rules may be useful. In suits for land exempt

If the amount or value of the property claimed does not exceed Rs.			Rs.	As.
		16 Stamp	0	4
Above 16 & not exceds.	32	„	1	8
„ 32 „	64	„	1	„
„ 64 „	150	„	2	„
„ 150 „	300	„	4	„
„ 300 „	800	„	8	„
„ 800 „	1600	„	12	„
„ 1600 „	3000	„	15	„
„ 3000 „	5,030	„	37	8
„ 5000 „	10,000	„	62	8
„ 10000 „	15,000	„	87	8
„ 15000 „	95,000	„	125	„
„ 25000 „	50,000	„	175	„
„ 50000 „	100,000	„	250	„
„ 100,000			500	„

from the payment of revenue, the value shall be calculated at *eighteen times* the aggregate annual rent payable by the ryots or other under-tenants of the land. In suits for any interest in land paying revenue to Government, the amount shall be computed according to the estimated selling price: or when no such estimate can be made, at the sum at which the plaintiff shall estimate the value of his suit. Suits for damages, under Act X., bear an eight anna stamp. The civil valuation is at the amount of damages sued for. Suits instituted to fix a ryot's rent are estimated at one year's rent. If the owner of Lakhiraj land sued a ryot, to whom he had sub-let, for arrears of rent, he would have to use a stamp of the full value prescribed for civil suits. (For further information, see Board's Rent Law Rules, Section III.)

Valuation in certain cases.

A ryot's pottah and its counterpart the Cabooliyat are exempt from stamp duty, but a farming lease, or any lease not given to an *actual cultivator*, must bear the proper stamp. If a ryot, however, have paid a fine or consideration for his lease, it is not exempt. The counterpart of a lease bears the same stamp as the original.

Leases.

Security bonds taken under Sections 51 and 127 of Act X. must be on stamp paper of the value indicated in Article 12, Schedule A, Act X. of 1862, (Board's Rent Law Rules.) Other security bonds will be on an eight anna stamp. (See Article 2, Schedule B. (Act X of 1862.)

Security bonds.

Mookhtarnamas in the Courts of Judges, Collectors, and Deputy Collectors, will be on an 8 anna stamp. Before a Commissioner, one rupee is the stamp; before the Board of Revenue or High Court, the stamp is two rupees.

Mookhtarnamas.

Appeals.

The stamp on the petition of appeal in the Civil Courts bears the same valuation as required for the original plaint; this rule must be followed in appeals to the Judge and to the High Court. The petition of appeal to a Collector bears a stamp of eight anas; to a Commissioner, a stamp of two rupees. If the appeal be from an *interlocutory order*, the stamp is two rupees in the High Court, and eight anas in all subordinate Courts; if the appeal be from *an order rejecting a plaint*, or if a suit be remanded in appeal for a second decision by the Lower Court, the Appellate Court shall grant to the appellant a certificate authorizing him to receive back from the Collector the stamp duty paid on the petition of appeal.

Applications for the summons of a witness or other person to give evidence or produce a document, or in respect of the production or filing of any exhibit, are exempt from duty.

Copies.

Copies of decrees, in cases in which the value of the claim is below 50 Rupees, are exempt from stamp duty in Courts subordinate to the High Court, *unless passed on appeal*; for that sum or above, a stamp is required of *one rupee* in other Courts; of four rupees in the High Court. The copy of a judgment (*i. e.*, written decision) or order not being a decree, requires a stamp of one rupee in the High Court, and of eight anas in all subordinate Courts; but if the value of the claim is below 50 rupees, no stamp is required, unless the judgment or order have been passed on appeal. The copy of a translation is subject to similar rules. If a judgment cannot be written on a single stamp paper, the additional pieces required may be plain paper. *In all other cases additional pieces required must bear the stamp of petitions, i. e. eight anas in the subordinate Courts, and one rupee before the Board of Revenue* or other chief controlling revenue authority.

Payment of penalty for document not properly stamped.

When a document *not properly stamped*, through inadvertence, has been filed as an exhibit in any Civil Court, as such document is not receivable in evidence, the law allows the person filing it, to remedy this by paying the proper amount of stamp duty, together with a certain penalty, *viz.*, double the amount deficient, within six weeks of execution; after six weeks and within four months, treble this amount; after four months, twenty times this amount. (Sections 15, 16, and 17, Act X of 1862.)

No interest is allowed to a plaintiff on any sum paid by the defendant into Court, from the date of such payment, whether the sum be in full of plaintiff's claim or not. (Section 75.)

A Collector may hold his Court for the trial of rent case in any part of his jurisdiction. It must be an open Court, and every hearing or decision must be made in open Court. The parties or their authorized agents must have notice to attend. (Section 148.) All powers vested in a Collector may be exercised by any Deputy Collector in cases referred to him by a Collector: and in all cases without such reference, by any Deputy Collector placed in charge of any sub-division of a district, or who is specially authorized by Government to receive such cases. (Section 19 of Act VI., B. C., of 1862.) Uncovenanted Deputy Collectors entrusted with Police functions cannot exercise any judicial powers or other jurisdiction in rent cases. (Section 164.) Assistants to Collectors cannot exercise any powers, unless specially invested by Government with the powers of Deputy Collectors. (Section 165.) A Collector may withdraw any suit from any Deputy Collector subordinate to him, and try it himself or refer it to another Deputy Collector. (Section 20, Act VI.,

Deputy Collector's powers.

B. C of 1862) In the general performance of their duties, Collectors and Deputy Collectors are subject to the general direction and control of the Commissioners and the Board of Revenue, and Deputy Collectors to the control of the Collector, to whom they are subordinate. (Section 151.)

The jurisdiction of a Collector is not affected by the nature of the defence set up, which would make the case one for the Civil Courts, if true: he should decide on the truth of this defence; should determine whether the relation of landlord and tenant exists or not. The finding on this point will determine the point of jurisdiction or non-jurisdiction. (*No.* 113 *of* 1862, *Hurree Persad Malee, Appellant,* 19*th August,* 1862) (*No* 219 *of* 1862, *Doyal Chunder Ghose and others, Appellants,* 16*th September,* 1862.)

Mookhtyars

Any person may practise as an Agent or Mookhtyar without any formal licence from the Collector. When any person has been convicted by a competent Court of a criminal offence, or has been found guilty of fraudulent or dishonest conduct in the discharge of his duty as an Agent or Mookhtyar, a Collector may prohibit him from practising in his Court. Any enquiry into such conduct must be conducted under Act XVIII. of 1852, or any other law for the time being in force, for the trial of charges against pleaders. (Section 149.) Mookhtyars can be held responsible for the correctness of statements made by them to the Court. They cannot, however, be deprived of their fees, by order of the Court, for displaying ignorance.

Exhibits filed by either party to a suit should be marked or endorsed *with the number and title of the suit, the name of the party producing them, and the date of their production.* There is no law which directs that this endorsement should

be subscribed by the presiding officer. Exhibits rejected should be endorsed as above, and also with the word "*rejected*," and *this endorsement* should be subscribed by the presiding officer. (See Section 132-134, Act VIII. of 1859.)

A Collector or Deputy Collector exercising jurisdiction under Act X. or Act VI., is a Judge in the sense of the word, as defined in Section 19 of the Indian Penal Code.

When the interest claimed exceeds the principal, a sum equal to the principal should be awarded for interest, unless the excess fell due after the suit was brought.

Claims for rent take precedence of all other attachments.

An offer to compromise a suit is not an admission of claim, into which mofussil practitioners are in the habit of trying to turn it.

APPENDIX.

CIRCULAR No. 31.

(ISSUED BY THE HIGH COURT.)

Dated Calcutta, the 13th October, 1863.

By paragraph 47 of the Circular Order of the late Suddor Court, No. 147, dated July 29th, 1859, the particular attention of the Lower Courts was called to the rule in Section 172 of Act VIII. of 1859, and the Judges were directed to take notice of all violations of the rule which should come under their notice. The rule laid down by that Section was, *that the evidence of each witness should be taken down by, or in the presence and under the personal superintendence of, the Judge.* That the Court should record such remarks as it might think material, respecting the demeanour of the witness while under examination. That in cases in which the evidence should not be taken down in writing by the Judge himself, he should be bound, as the examination of each witness should proceed, to make a memorandum of the substance of what such witness should depose, and that the memorandum should be written and signed by the Judge and should accompany the record. It was further enacted that, if the Judge should be prevented from making a memorandum as required, he should record the reason of his inability to do so.

In several cases which have recently come before this Court "pressure of business," "excess of business," &c., have been recorded as reasons for not making a memorandum of the evidence as required by the Act. But pressure or excess of business was never intended by the Legislature to be considered as a sufficient

reason or excuse for not complying with the Act. If the Judge attentively listens to the evidence as it is given, and watches the demeanour of the witness as he is bound to do, and for the neglect of which duty no pressure of business can form an excuse, it will not occupy further time to take a memorandum of the substance of the evidence. In other cases, there has been a mere short note stating the result of the evidence of several witnesses together, in a few words, the memorandum showing on the face of it, that it could not have been made until after all the witnesses, of whose evidence the result was given, had been examined. Such a memorandum, it is evident, is no compliance with the Act, which requires the memorandum to be written as the examination of each witness proceeds.

In another case tried before a late Principal Sudder Ameen, it was represented to the Court that the examination of a witness in one case was being taken down whilst the Principal Sudder Ameen was listening to the argument of a Vakeel in another case. Such a course of proceeding, if it took place, was a clear violation of the Act: for, when the Legislature directed that the evidence of witnesses should be taken under the personal superintendence of the Judge, it never could have been intended that the Judge should be attending to other business at the same time.

These cases are given merely as instances to show how the Act has been disregarded in many of the Civil Courts in the Mofussil.

It is not the wish of the Court to advert further to the past, but to express their determination that the provisions of the Act shall be strictly complied with in future.

They therefore direct that, after the promulgation of this order, the following rules shall be strictly observed by the Judges of every grade :—

1. Every witness shall be examined *viva voce* in open Court in the presence of the Judge.

2. A Judge shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

3. If, whilst the examination of a witness is going on, the Judge be compelled to attend to any other business, the examination of the witness shall stop as long as such other business is being attended to.

4. The examination of a witness shall not be interrupted, for the purpose of enabling the Judge to attend to other business, unless such business be of an urgent nature.

5. If the evidence be not taken down by the Judge, he shall make a memorandum in his own handwriting of the substance of what each witness deposes. Such memorandum shall be written legibly in the Vernacular language of the Judge, or in English, at the option of the Judge, if he is sufficiently acquainted with that language; and it shall be signed by the Judge and dated, and shall form part of the record and be always sent up with the record to the Appellate Court in the event of an appeal.

6. Pressure of business will form no excuse for not making the memorandum; physical inability (the nature of which shall be recorded) will alone be admitted as an excuse.

7. It shall be the duty of every Appellate Court subordinate to the High Court to examine the memorandum of the evidence made by the Judge of the Court of First Instance, and to report to the High Court in every case in which upon the hearing of a Regular Appeal it shall appear that the above rules have not been strictly and properly attended to.

8. The memorandum made by the Judge of the Court of First Instance shall, in all cases, form part of the documents to be sent up to the High Court on Special as well as on Regular Appeals.

9. After the examination of witnesses has commenced, the trial should be proceeded with until all the witnesses on both sides have been examined, those of the party upon whom the *onus* of proof lies being examined first, and then those of the opposite party; *and an adjournment of the hearing shall not be allowed, except for sufficient cause, which shall be recorded.* Particular attention is called to the last paragraph of Section 145, Act VIII. of 1859, by which it is provided, "that if the summons shall have

been issued for the final disposal of the suit, and either party shall fail, without sufficient cause, to produce the evidence on which he relies, the Court may at once give judgment." *The same rule is applicable after a day is fixed for trial.*

10 Cases may arise in which, from the absence of an important witness which could not be avoided by the party who requires his evidence, it may be necessary to adjourn the hearing. In such cases, the evidence of the witnesses in attendance shall be taken, and the witness shall not be detained, or required to attend again, unless for some special reason to be recorded.

11. Whenever an adjournment takes place, it shall be for as short a time as possible: regard being had to the circumstances under which the adjournment is granted.

12. *No adjournment shall be granted in any case, except viva voce in open Court.* The day to which the case is adjourned shall, in all cases, be stated publicly by the Judge in open Court, and the *reason for the adjournment shall also be stated and recorded.*

13. A list of all cases adjourned, and the day to which each case is adjourned, shall be affixed in some conspicuous part of the Court House.

14. If, after all the witnesses have been examined, the exhibits perused, and the parties heard by themselves or their pleader, the Judge be not prepared to deliver judgment, he may postpone the delivery thereof until a future day, of which due notice must be given, as required by Section 183, Act VIII. of 1859. The witnesses shall not be detained.

15. The whole of the judgment, as written in pursuance of Sections 184 and 185 of Act VIII. of 1859, shall be pronounced *viva voce* in open Court, either in the language in which it is written, or in the language used in the Court.

16. The Judge of the Court in which the judgment is delivered will be held responsible, if the decree be not drawn up, in every case, within a reasonable time after the delivery of the judgment, or, if certified copies thereof be not furnished pursuant to Section 108, Act VIII. of 1859, within a reasonable time after appli-

cation for the same and the production of the necessary Stamp.

17. The Judge shall make a memorandum on the decree, of the date on which he actually signs it, and on the certified copies of the day on which they are furnished.

18. The Judge of every Court shall sit punctually at the hour appointed.

19. A copy of these Rules, together with a translation thereof in Bengallee and Urdu, shall be affixed or hung up in some conspicuous part of the Court House in every Civil Court, and shall be kept so affixed or hung up at all times during the sitting of the Court.

20. No excuse will be admitted for any wilful or negligent disobedience of the above Rules, and the Judge of the District shall report to this Court in every case in which a violation of the same shall come under his notice.

The Court is satisfied that, by a strict compliance with the above Rules, the administration of justice will be greatly improved. Much irrelevant matter, which is now copied, over and over again in the depositions of the witness in almost the same words, will be omitted. The depositions will be shortened, and the record will not be loaded with statements, which are wholly irrelevant and inadmissible as evidence.

It will be the duty of the Judge to ascertain, by a few questions put to each witness at the proper time, *whether he is speaking of matters within his own knowledge, or merely of those which he has heard* from others; and if the former, what are his means of knowledge.

If any doubt exist as to the admissibility in any particular case of hearsay evidence, the answers will be recorded: and in cases in which it shall appear to the Judge that it is clearly not admissible, the evidence will be rejected, and need not be recorded. But, if requested by either party or his pleader, the Judge shall make a note that the evidence, stating the nature of it, was tendered by the plaintiff or defendant, as the case may be, and that it was rejected,

together with the reason for rejecting it. The Judge is expected to give his sole and, undivided attention to the evidence as it proceeds, and to discriminate between that which is relevant and legally admissible and that which is not, and to record such remarks respecting *the demeanour of each witness* while under examination, as may be material.

If the Judge entertain a doubt as to the admissibility of the evidence, the safer course will be to admit it, if not objected to by the opposite party or his pleader; and if objected, to take down the question and answer, and also the objection and the name of the party making it, as required by Section 172.

The Judge will be held responsible for the manner in which the evidence is recorded, and for testing the evidence of the witnesses and ascertaining their means of knowledge, and recording whether they are speaking from their own knowledge or merely from hearsay or report.

Another matter which has attracted the attention of the Court is the manner in which cases are tried.

As a general rule, when once the examinnation of witnesses has commenced, the trial should be proceeded with until all the witnesses on both sides have been examined, those of the party upon whom the *onus* of proof lies being examined first, and then those of the opposite party. No fresh case should be taken up intermediately. Cases will doubtless occur in which, from the absence of an important witness or witnesses, or other sufficient cause, it may be necessary to postpone the hearing before all the evidence has been recorded. In such cases, the evidence of all the witnesses in attendance should be taken, and the witnesses should not be detained or required to attend again, unless for some special reason.

The Judges should bear in mind that, when a day has been fixed for the production of evidence and for the final hearing of a suit, and notice has been given pursuant to Section 44 of the Circular Order No. 147 of 1859, the hearing should not be adjourned, unless upon application and sufficient cause shown by one of the parties. Attention is called to the latter part of Section 145, Act

VIII. of 1859, by which it is enacted "*that, if the summons shall have been issued for the final disposal of the suit, and either party shall fail, without sufficient cause, to produce the evidence on which he relies, the Court may at once give judgment;*" and to the latter part of Section 146, which provides that in all cases in which time is given to either party, "*the party applying shall pay the costs occasioned by the adjournment, unless the Court shall otherwise direct.*" In all cases in which an adjournment of the hearing takes place after the examination of witnesses has commenced, the adjournment should be for as short a period as possible: regard being had to the circumstances under which it is granted, and the reasons for the adjournment should be recorded.

If, after all the witnesses have been examined and the parties or their pleaders have been heard, the Judge be not prepared to give judgment at once, the witnesses should not be detained, but the Judge may postpone the delivery of judgment until a future day, of which due notice should be given as required by Section 183, Act VIII. of 1859.

The whole of the judgment written, as required by Sections 184 and 185 of Act VIII. of 1859, should be delivered *viva voce* in open Court.

It will be the duty of the Judge to see that the decree is drawn up, in every case, within a reasonable time after the judgment is delivered. The Judge shall make a memorandum on the decree of the date on which it is actually signed by him.

The Court has reason to believe that some of the Judges do not attend punctually at the hour appointed for the sitting of the Court. It should be borne in mind that, independently of all other considerations, such a practice must necessarily cause great inconvenience and delay to suitors and witnesses, and that it is unreasonable that many should be kept waiting for the convenience of one.

The Court wishes it to be understood, that THE CHARACTER AND MERITS OF A JUDGE DO NOT DEPEND SO MUCH UPON THE NUMBER OF SUITS WHICH HE DECIDES, AS UPON THE SOUNDNESS AND ACCURACY OF HIS DECISIONS, and the Judges of every grade may be rest assured

that, in reviewing their monthly returns, due allowance will be made by this Court for the time necessarily occupied in the proper and effectual discharge of their duties, and in carrying out strictly the requirements of the Code of Civil Procedure

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TO THE MOST IMPORTANT DECISIONS QUOTED IN THE PRECEDING WORK.

A

ABATEMENT.

A Zemindar is entitled to a decree for arrears of rent, though a suit for—by the ryot be pending. *No.* 450 *of* 1863, *Hurrish Chunder Chowdry, Appellant,* 17*th August,* 1863.

The right to claim—is not confined to ryots having rights of occupancy. *No.* 482 *of* 1863, *Ram Chunder Bhose, Appellant,* 17*th August,* 1863. A directly opposite ruling is *No.* 2207 *of* 1861, *Lalla Sheeb Lal and others, Appellants,* 3*rd March,* 1863. See, however, *No.* 409 *of* 1862, *Sheikh Moheem, Appellant,* 12*th March,* 1863. A tenant holding under a Cabooliyat is entitled to abatement of rent for land washed away, unless the terms of the Cabooliyat expressly preclude it. Although Section 18 is expressly confined to ryots having a right of occupancy, yet Act X. was never intended to take away any right which existed independently of the Regulations repealed thereby, as the right of claiming abatement for land washed away for instance. *No.* 2052 *of* 1862, *Sheikh Evayctoolah and others, Appellants,* 5*th April,* 1864.

A suit for a——by a putneedar is not cognizable by the Collector under Section 18 of Act X, but must be brought in the Civil Courts.—*No.* 1395 *of* 1863, *Maharajah of Burdwan, Appellant,* 18*th March,* 1864. The same ruling was made in *No.* 3383 *of* 1863, *Ramdhun Bannerjee and others, Appellants,* 4*th July,* 1864, but Mr. Justice Levinge took an opposite view, and his opinion has since been affirmed by a full bench.

A suit for——and for refund of the excess rents exacted for diluviated lands (the lease providing for abatement of rent proportioned to the diluvion) is cognizable in the Revenue Courts. The period of limitation will begin to run not from the time of diluvion, but from the time of exaction of excess rent. *No.* 1565 *of* 1863, *Mr. G. R. Barry, Appellant, 6th May*, 1864.

ADJACENT PLACES.

Prevailing rates in.—See Rates.

AGENT.

An—who enters into a contract in his own name without disclosing the name of his principal, will be liable, if the other party to the contract, with a full knowledge of all the particulars, choose to trust him in his individual character. If otherwise, the principal, when discovered, is liable to be sued on the contract, but both cannot be proceeded against. *No.* 61 *of* 1862, *Heera Lall Buxee, Appellant, 11th November*, 1862. See also *No.* 2882 *of* 1862, *Sheikh Kamyáh, Appellant, 17th June*, 1864. (*Vide* Paterson *vs.* Gandasequi. Smith's Leading Cases, Vol. II., page 295.)

——Liable to be sued under Section 24 must have been employed in the management of lands, or in the collection of rent. An agent for the receipt and custody of rents collected by others and paid to him, must be sued in the Civil Courts. *No.* 246 *of* 1863, *Kunneeram Poorkha, Appellant, 21st September*, 1863, See also *No.* 261 *of* 1863, *Lalla Ruttun and others, Appellants. 17th February*, 1863.

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Agency must be held to terminate from the date of suspension of an—*No.* 2541 *of* 1862, *Muddun Mohun Roy, Appellant, 27th January*, 1864.

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ALLUVION.

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AMENDMENT OF ISSUES.—See Mistake.

APPEAL will lie from an order reversing the decision of a Lower Court, and remanding a case to be tried on its merits. *No.* 2211 *of* 1862, *Ramnauth Lall Bhukut, Appellant, 7th August*, 1863. *But see No.* 2191 *of* 1862, *Sreemutthy Shoonamyea and others, Appellants, 4th May*, 1863.

————Made by mistake to the Judge instead of to the Collector. High Court refused to grant further time for an appeal to the Collector. *No.* 281 *of* 1863, *Rajbhullub Bhunge, Appellant, 10th August*, 1863.

————From a decision under Section 77 lies to the Judge, even though the claim be less than 100 Rupees. *No.* 1178 *of* 1863, *Gopal Chunder Dass and another, Appellants, 10th September*, 1863.

————From an order passed by a Collector, under Sections 25 to 27, lies to the Commissioner and not to the Judge. *No.* 386 *of* 1860, *Meer Mahomed Tuckee Chowdhry, Appellant, 17th June*, 1861; *and C. J. Philip, Appellant, 3rd June*, 1863.

————From the orders of an Assistant or Deputy Collector in suits in which the amount in dispute does not exceed Rupees 100, and which do not involve any question of title, lies to the Collector and not to the Judge. *No.* 1176 *of* 1860, *Chunder Koomar Mitter, Appellant, 22nd August*, 1861.

————From an order passed under Section 28, lies not to the Commissioner, but to the Judge. *No.* 1988 *of* 1861, *Bishwambhar Misser and others, Appellants, 18th March*, 1863.

An appeal will lie by a party from a decision, which is in some parts against him, though the decree itself be in his favour. *No.* 1914 *of* 1861, *Maharanee Inderjeet Kooywar, Appellant,* 19*th February*, 1863.

See also Appellant—Appellate—Decree—Judge—Intervener—Reversal and Special.

APPELLANT.

An appeal may be decreed on the appeal of one of several defendants whose interests are identical, or whose liability is joint. *No.* 2959 *of* 1862, *Ram Chunder Chowdhry, Appellant,* 25*th September*, 1863. *No.* 1671 *of* 1861, *Luckee Kant Sen, Appellant,* 13*th February*, 1863.

APPELLATE COURT may compel the attendance of either party as a witness, and, in case of recusancy, pass judgment against him. *No.* 1775 *of* 1862, *Juggurnath Persaud, Appellant,* 22*nd April*, 1863.

Lower Appellate Court should not, as an ordinary rule, except as to jurisdiction, take up points in bar not taken in the first Court, or not urged on the trial there. *No.* 2663 *of* 1863, *Ranee Suvarnamayi, Appellant,* 30*th July* 1864. See also *No.* 909 *of* 1864, *Ishwar Chunder Ghosal, Appellant,* 20*th August*, 1864.

Appellate Court cannot reject an appeal for the non-verification of a statement admitted, without verification by the Court of first instance.—*No.* 1090 *of* 1864, *Mr. G. Clarke, Appellant,* 17*th September*, 1864.

ARREARS OF RENT.

Ryot liable to ejectment for what.—See Ejectment.

A landlord cannot eject for arrears of any year, if he has received the rent for a subsequent year. *No.* 39 *of* 1862, *Sheikh Peer Bux, Appellant,* 28*th July*, 1862.

————Due from a co-sharer cannot be sued for under Act X. *No.* 101 *of* 1862, *Goluck Chunder Roy and others, Appellants,*

16th September, 1862. *No.* 453 *of* 1863, *Syed Hyder Ali, Petitioner*, *5th April*, 1864.

——————No answer to a suit for a pottah.—See Pottah.

————Of rent due on account of an Indigo Factory cannot be sued for under Act X. The land is the least part of the Indigo Factory. *No.* 841 *of* 1862, *Oddit Chunder Paul and others, Appellants*, 1*st April*, 1863. *No.* 877 *of* 1862, *Chitromonee Dassee and others, Appellants*, 1*st April*, 1863.

————Of rent cannot be recovered unless it be shewn that the relation of landlord and tenant exists between the parties. *No.* 1521 *of* 1863, *Mahomed Assun Chowdhry, Appellant, and No.* 1515 *of* 1863, *Nauth Tagore, Appellant*, 31*st March*, 1864. But this relation will be assumed, and a contract creating the relation of landlord and tenant will be implied, when a ryot chooses to cultivate a zemindar's land, and the zemindar permits him. Tenancy in many parts of Bengal commences by *squatting*, and in such cases the *squatter* is under obligation to pay a fair rent, when the zemindar may choose to demand it.—*No.* 3358 *of* 1863, *Nitta Nund Ghose and others, Appellants*, 20*th June*, 1864.

————One of two or more shareholders to whom jointly an *ikrar-namah* for rent has been given, in which the amount of rent is specified, can recover separately in a suit for arrears, if his specific share be averred in the plaint and be not denied by the defendants. *Nos.* 1298 *to* 1301 *of* 1863, *Omrit Chrowdry and others, and Ram Jewun Chrowdry, Appellants*, 6*th May*, 1864. But not, if the shareholder hold in coparcenary, and the defendant deny his liability. *No.* 1926 *of* 1863, *Dhurm Lol Singh, Appellant*, 8*th July*, 1864.

In a suit for arrears, a tenant who has executed a Cabooliyat, will not be permitted to question his landlord's title. *No.* 2897 *of* 1863, *Mussamut Purnia, Appellant*, 24th *June*, 1864.

ASSIGNMENT OF RENTS.

Assignee must sue in the Revenue, not in the Civil Courts. *No.* 172 *of* 1863, *Kisher Koomar Mitter and others, Appellants, 8th January,* 1864; *No.* 1857 *of* 1861, *Shama Soonderee Dasee and others, Appellants, 4th December,* 1862.

Notice of—must be given, otherwise the tenants will not be liable to the assignee for payments made correctly in the absence of such notice. *No.* 71 *of* 1862, *Sheikh Attapyee Mowlah, Appellant,* 21*st August,* 1862.

ASSISTANT COLLECTOR.—See Deputy Collector.

AUCTION.—See Purchaser. An Auction-purchaser, under Act XI. of 1859, cannot eject a ryot having a right of occupancy, or enhance his rent otherwise than under the law in force. (Act X.) *No.* 3548 *of* 1863, *Dabee Bhuggut and another, Appellants,* 12*th July,* 1864.

AWARD.—See Butwara.

B.

BAR.

Receipt of rent of a subsequent year is a bar to ejectment for a previous arrear. *No.* 39 *of* 1862, *Sheikh Peer Bux, Appellant,* 28*th July,* 1862.—See Dismissal, Rent.

BASTOO lands are subject to enhancement on the usual grounds. *No.* 294 *of* 1863, *Mr. T. J. Kenny, Appellant,* 4*th February,* 1864.

BENAMEE.

A Revenue Court has power, under Act X., to try whether a party is the—holder of a certain farm.* *No.* 61 *of* 1862, *Heera Lall Buxee, Appellant,* 11*th November,* 1862. Section 260, Act VIII. of 1859, does not preclude a person purchasing—from setting up his title against a person not being a certified purchaser, or claiming through him. *No.* 944 *of* 1862,* *Mussamut Shorosuttee Dasee, Appellant,* 23*rd April,* 1863. *No.* 171 *of* 1864, *Kadambari Devya, Appellant,* 4*th August,* 1864.

BREACH of stipulation as a ground for ejectment.—See Lease.

BURDEN OF PROOF.

A sues B for rent of certain lands. B admits that he is A's ryot for a portion of these lands, but pleads that the rest is rent-free. The—of this special plea will fall upon the defendant B. *No.* 980 *of* 1862, *Gooroo Persad Roy and others, Appellants, 5th August,* 1862.—See Lakhiraj.

In a suit for enhancement, if the defendant pleads that the productive powers of the land have been increased by his own exertions, the—is on him. *No.* 486 *of* 1864, *Nobin Kishen Bose and others, Appellants, 18th August,* 1864.

If a defendant admit his liability to pay rent, but plead payment, the—is upon him. If there is any doubt as to the sufficiency of the proof, the landlord should have the benefit of such doubt. *No.* 3438 *of* 1863, *Mahabir Singh, Appellant,* 19th *August,* 1864. *No.* 695 *of* 1864, *Isshur Chunder Acharjya, Appellant,* 22*nd August,* 1864.

BUTWARA.

An order passed by a Collector in—proceedings, rejecting a ryot's objection as to the amount of rent payable by him, is not an award within the meaning of Act XIII. of 1848, so as to be a bar to a subsequent suit for a Cabooliyat. *No.* 4 *of* 1862, *Pultoo Roy and others, Appellants, 30th July,* 1862.

C.

CABOOLIYAT.

In a suit for a—an intervener can appear and be heard under Section 77. *No.* 174 *of* 1863, *Sheik Manik Mundle, 4th August,* 1863. *No.* 2053 *of* 1863, *Rance Khome Moyee,* alias *Khome Shurry Dabea, Appellant, 8th July.* 1864.

In suit for a—it must be shown that a contract (express or implied) existed, by which the relation of landlord and tenant was created. *No.* 186 *of* 1862, *Gopee Mohun Ghose, Appellant, 3rd December,* 1863.

Notice is not required in a suit for a—at enhanced rates. *Nos.* 2960 *and* 2961 *of* 1862, *Jan Ally, Appellant, 5th January,* 1864. *No.* 2216 *of* 1862, *Ram Kanth Chowdry, Appellant, 7th July,* 1864.

The proviso in a—that the tenant shall pay at pergunnah rates for land found on future measurement to be in excess of the recorded area, is to prevent a tenant from encroaching on the khas lands of the zemindar, and does not vary the strict terms of the lease, binding the tenant to pay a certain rent for an area found by a prior measurement. *No.* 1055 of 1863, *Mr. J. A. Courjon, Appellant, 16th February,* 1864.

Though it is necessary that before a landlord can sue for a—he should tender a pottah, yet the objection that it has not been tendered cannot be made for the first time orally in special appeal. A tenant is not bound to execute a Cabooliyat for land held under an istemraree pottah, as this might destroy his title. If a tenant encroaches on land other than his own, and then is unable to show which is his own and which the encroachment, he is liable to be assessed for the encroachment as for the best land. *No.* 2137 *of* 1862, *Doorga Kanth Muzumdar, Appellant, 5th April,* 1864.

A zemindar cannot sue for a—from a mere trespasser, and not a tenant. *No.* 2216 *of* 1862, *Ramkanto Chowdry, Appellant, 7th April,* 1864.—See Arrears—Butwara.

In a suit for a—the plaint should contain such a specification or definition of boundaries that the Court may know the lands as to which, if it gives a decree to the plaintiff, that decree will operate and may be duly executed. *No.* 3579 *of* 1863, *Muddhun Mohun Bannerjee and others, Appellants, 25th July,* 1864.

Case must be proved as laid in the plaint. If a party rely on a document and fail to prove it, he is not entitled to succeed, and must not be permitted to set up a fresh case. *No.* 176 *of* 1862, *Nurrohurry Mohunto, Appellant, 12th August,* 1862—See Document.

CHANGE.

The division of a ryot's holding among his heirs, each one of them (with the landlord's consent) paying separately his share of the old rent, is not a commencement of new tenancies, nor a change in the rent within the meaning of Section 3, Act X. of 1859. But if any one of such shareholders default, the tenure of all will thereby be vitiated. *No.* 1355 *of* 1863, *Mr. James Hills, Appellant, 9th August*, 1864. The consolidation of several holdings into one by a Government Settlement Officer, or the omission of fractions from the rent, is in like manner not a change of the rate of rent. *No.* 2549 *of* 1863, *Sukhi Mani Haldar, Appellant, 25th July*, 1 64.

CLAIM.

Every suit must include the whole of the claim arising out of the cause of action. If a plaintiff relinquish, or omit to sue for any portion of his claim, a suit for the portion so relinquished, or omitted, cannot afterwards be brought, *i. e.*, the principle of Section 7, Act VIII. of 1859 applies to Act X. suits.—*No.* 2713 *of* 1863, *Ranee Bhobo Soonderee, Appellant, 24th June*, 1864.

COLLECTOR.—See Jurisdiction.

COPARCENARY.

A claim for rent by a shareholder in an estate held in— cannot be maintained, if the defendant denies his liability. *No.* 1926 *of* 1863, *Dhurm Lol Singh, Appellant, 8th July*, 1864. A payment to one of two such shareholders is good, if the tenant have hitherto paid to them jointly, and have received no notice of a separation of interests and shares. *No.* 185 *of* 1864, *Mussamut Akburoonissa*, alias *Akua Beebee, Appellant, 11th August*, 1864.—See Co-sharer.

CO-SHARER cannot be sued for arrears of rent under Act X. *No.* 101 *of* 1862, *Goluck Chunder Roy and others, Appellants, 16th September*, 1862. But where a shareholder in a joint undivided estate had *exclusive occupation* of certain land in the

joint Talook, and a co-sharer sued him to obtain a Cabooliyat for his share of the rent, the High Court upheld an order decreeing the claim. *No.* 928 *of* 1864, *Gooroo Prosonno Roy and others, Appellants*, 26*th August*, 1864.

D.

DAMAGES under Section 2, Act VI. (B. C.) of 1862, are not recoverable unless specially alleged and claimed in the plaint. *No.* 1228 *of* 1863, *Hurro Mohun, Appellant*, 9*th September*, 1863.—See Distraint.

————under Section 2, Act VI. (B. C.) of 1862, should be awarded only under special circumstances, and *on proof* of special refusal or neglect to pay the rent. *No.* 2675 *of* 1863, *Bolye Chund Dutt, Appellant*, 22*nd June*, 1864. They are awardable only in addition to *rent* and *costs*, and are to be regarded as in substitution for, not in addition to, the interest awardable under Section 20, Act. X., *i. e.*, interest awardable when there is no contract for interest. *No.* 171 *of* 1864, *Nava Kanth De, Appellant*, 9*th September*, 1864.

DEATH of one of the parties to a suit does not cause the suit to abate. *No.* 2282 *of* 1863, *Juggo Mohun Sing, Appellant*, 13*th April*, 1864.

DECREE of a Civil Court, if clear as to the lands in question, would entitle an intervener to succeed against a plaintiff, who had enjoyed the rents up to the time of suit. *No.* 211 *of* 1863, *Syed Ahmed Reza, Appellant*, 5*th August*, 1863.

————For a particular year's rent affords a presumption, though a rebuttable one, of the payment of the rent of previous years. —See Presumption.

A former—is *primâ facie* evidence of the yearly rent payable. The defendant may rebut this by shewing that the rent has been since altered. *No.* 3494 *of* 1863, *Chunder Koomar Roy, Appellant*, 30*th June*, 1864.

A—for enhanced rent should have effect given to it, *i. e.*, the rate fixed should be allowed in a subsequent suit for arrears,

even though the decree had been appealed against on a point of law.—*Nos.* 1800, 1811, and 1812 *of* 1863, *Mr. G. Gregory and others, Appellants, 8th July,* 1864.

Suit cannot be maintained in the Civil Court to enforce a decree of a Revenue Court, which the latter Court has refused to execute upon the ground of its having been satisfied.—*Anund Mayi Dasee, Appellant, 3rd June,* 1863.

Where an appeal lies to the Judge, it will lie with reference to the execution of a *decree* in the class of cases so appealable. *No.* 438 *of* 1863, *R. Salano, Appellant, 19th April,* 1864.

DEPUTY COLLECTOR.

An appeal from the order of an Assistant or Deputy Collector in suits in which the amount in dispute does not exceed 100 Rupees, and which do not involve any question of title, lies to the Collector, not to the Judge. *No.* 1176 *of* 1860, *Chunder Koomar Mitter, Appellant, 22nd August,* 1861.

DISMISSAL.

It is nowhere stated in Act X. that a decree against a plaintiff in a former case, *i. e.*, a dismissal, is a bar to another suit for the same demand. It is merely upon general principles that it is a bar. *No.* 1188 *of* 1862, *Tara Persad Roy Chowdry, Appellant, 12th August,* 1862. In this case the former suit was dismissed for want of evidence. This demand was subsequently amalgamated with a further claim. The Deputy Collector decreed both. The Judge on appeal, reversed the part of this order relating to the former demand, and the High Court upheld this decision. But see Macpherson's Civil Procedure (1860), page 50.

——of a suit for arrears of rent against several ryots as jointly liable, on the ground of the joint liability not having been proved, is not a bar to a suit against the ryots separately. *No.* 1744 *of* 1862, *Baboo Tilakdaree Sahoo, Appellant, 22nd April,* 1863.

The entire claim of a plaintiff should not be dismissed merely because a portion of it is proved to be false *No* 1073 *of* 1861, *Kunja Beharee Banarjee, Appellant*, 21*st September*, 1861

DISPOSSESSION from a tenure by a third party does not absolve from liability for rent to the zemindar, but if the zemindar be the dispossessing party, he cannot sue for rent *No* 943 *of* 1862, *Khajah Abdool Gunny, Appellant*, 23*rd April*, 1863 Also *No* 545 *of* 1861 and *No* 2189 *of* 1862, *Mr John G Gale, Appellant*, 4*th May*, 1863

DISTRAINT

A Naib or Gomashtah must have an express Power-of-Attorney or authority to distrain, and cannot do so upon his general powers If he do so without a special authority, he alone will be liable for damages and to the punishment of Criminal Trespass under the Penal Code But if the Zemindar have received the proceeds, or otherwise ratified the act, he should also be made liable for damages The Appellate Court may revise the amount of these damages *No* 1855 *of* 1861, *Kalee Mohun Roy Chowdry, Appellant*, 13*th February*, 1863

A suit under Section 143, Act X of 1859, to recover damages for injury sustained by an unauthorized distraint under colour of Act X, only lies if the relationship of *landlord* and *tenant* exists between the parties *No* 886 *of* 1864, *Raghu Nath Sahay and others, Appellants*, 26*th August*, 1864

In a suit for damages for illegal distraint, the three months' limitation under Section 144, may be counted from the date of the release of the property, instead of from the date of distraining *No* 2257 *of* 1862 *Huramun Singh, Appellant*, 5*th May* 1863 —See Under-tenant

DOCUMENT

Misconstruction of a written—forming the basis of a plaintiff's or a defendant's plea, is a valid ground of special appeal *No* 1569 *of* 1861, *Rajah Prankishen Singh Surma, Appellant*,

1st October, 1861. *No.* 1603 *of* 1861, *Rameekamet, Appellant*, 20*th November*, 1862.

A party who relies upon a—to prove his case, and fails to prove this document, is not entitled to succeed, and cannot be permitted to set up a fresh case. *No.* 176 *of* 1862, *Nurrohurry Mohanto, Appellant*, 12*th August*, 1862. *No.* 2042 *of* 1861, *Mussumat Fatima Beebee, Appellant*, 23*rd January*, 1863. *No.* 1509 *of* 1863, *Gooroo Dass, Appellant*, 31*st March*, 1864. *No.* 3330 *of* 1863, *Woomesh Chunder Bishwass, Appellant*, 8*th June*, 1864.

The credibility of a—is a question of fact, and will not form a ground of special appeal. *No.* 1063 *of* 1863, *Hurro Kishore Chowdry, Appellant*, 16*th February*, 1864.

Discretion of a lower Court in receiving documents filed by the plaintiff on the day of hearing, cannot be questioned on (regular) appeal. *No.* 106 *of* 1864, *Sooklol Tiwaree, Appellant*, 16*th July*, 1864. See also *No.* 455 *of* 1863, *Joy Chunder Surma Mozoomdar and others, Appellants*, 2*nd March*, 1864.

DUTIES.—See Golahs.

E.

EJECTMENT.

A ryot is liable to—only for arrears due at the close of the Bengalee year, and is not liable thereto for arrears due in the middle of the year, or even for the non-payment of the rent of the first ten months of the year. *No.* 443 *of* 1862, *Mr. R. Savi, Junior, Appellant*, 13*th March*, 1863. *No.* 261 *of* 1863, *Ram Jeebun Dass, Appellant*, 5*th August*, 1863.

A suit for—of the nature to which Section 25 is applicable, can be brought in the Civil Court. *No.* 2313 *of* 1862, *Muddun Mohur Roy, Appellant*, 21*st August*, 1863.

————Not illegal, because it took place before the party ousting obtained a pottah from Government. *No* 370 *of* 1862, *Mr. Robert Morell and others, Appellants*, 3*rd December*, 1863.

Only those parties can be ejected under Section 78, who come within the purview of Sections 21, 22. Persons with a

permanent or transferable interest cannot be ejected. Their tenures must be sold under Section 105. *No.* 262 *of* 1860, *Nundlol Ghose and others, Appellants*, 31*st December*, 1860.

————Can be sued for, however, even in the case of an under-tenure saleable under Section 105, if the lease contains the condition that, in case of non-payment of rent, the *status* of tenant shall cease. *No.* 1443 *of* 1862, *Joydoorga Debea and others, Appellants*, 13*th April*, 1863.

A zemindar cannot eject a ryot under Section 78 of Act X., if a third party, alleging himself to be the transferree of the rights of the tenant against whom a decree for arrears has been obtained, pay in the amount of such decree. *No.* 1145 *of* 1862, *Saroda Persad Roy Chowdry, Appellant*, 13*th April*, 1863.

In a suit for ejectment under clause 5, Section 23, or under Section 78 of Act X., the appeal lies to the Judge. *No.* 2811 *of* 1863, *Kalleebur Opadyah, Appellant*, 22*nd June*, 1864.

A Zemindar is not obliged to apply under Section 25 of Act X., for assistance to eject, if he can legally eject without such assistance. *No.* 2199 *of* 1863, *Sheo Rutthun Sing and others, Appellants*, 11*th May*, 1864.

If a tenant cease to pay rent, deny the landlord's title, and set up an adverse title, the landlord may regard him as a trespasser, and instead of proceeding under Act X., may sue to eject in the Civil Courts. *No.* 2892 *of* 1863, *Shib Persaud Chuckerbutty, Appellant*, 9*th June*, 1864.

————See Arrears—Bar—Lease—Receipt—Rent—Intervener.

ENCROACHMENT—Assessment of land added by—to an old holding. —See Cabooliyat.

ENHANCEMENT.

A durputneedar is entitled to enhance, unless the right to do so was specially restrained at the creation of the tenure. Proper mode of proceeding in a suit for enhancement, on the ground *that the value of the produce or the productive powers of the*

land have increased otherwise than by the agency or at the expense of the ryot. No. 1607 *of* 1862, *Isshur Ghose, Appellant,* 24*th September*, 1862.

The land not being let at so much per beegah, but the boundaries, area, and jumma, payable in one sum, being defined in the pottah, enhancement, on the ground of the quantity of land being more than that for which rent had been previously paid, could scarcely take place. *No.* 2039 *of* 1863, *Ram Narain Nundy. Appellant,* 17*th February*, 1864.

One of several joint proprietors of an estate can maintain a suit for enhancement of his share of the rent without a *butwara. No.* 767 *of* 1863, *Troylochtaran Chowdry, Appellant,* 1*st April*, 1864. *No.* 3542 *of* 1863, *Ram Lochun Dutt, Appellant,* 13*th July*, 1864.

Middlemen are liable to enhancement and two-thirds of the surplus profits was held a fair proportion to be awarded to the landlord in *No.* 11 *of* 1864. *Jadub Chunder Haldar, Appellant,* 30*th May*, 1864.

In a suit to enhance up to the limit of the prevailing rates for similar land in the neighbourhood, there may be special reasons for fixing the fair and equitable rate below the prevailing rate, as for instance in the case of a *jungleboóree* lease, where the ryot had at his own expense cleared the land. *No.* 112 *of* 1863, *Noor Mahomed Mundle,* 31*st May*, 1864.

In a suit for enhancement, the plaintiff is not bound to prove the former rates, but is entitled to rent at the rates of the neighbourhood. *No.* 445 *of* 1864, *Bholonath Ghose, Appellant,* 13*th August*, 1864.

One of several joint proprietors of an estate can maintain a suit for enhancement of his share of the rent without a *butwarra* having taken place. *No.* 767 *of* 1863, *Troylochtaran Chowdry, Appellant,* 1*st April*, 1864. *No.* 3542 *of* 1863, *Ram Lochun Dutt, Appellant,* 13*th July*, 1864.

If a suit for arrears of enhanced rent fail on account of some irregularity, the Court cannot make an order as to the prospective liability of the defendant. *No.* 909 *of* 1864, *Ishwar Chundra Ghosal, Appellant, 20th August*, 1864. But if the question of the liability of the tenure to enhancement has been put in issue and fully tried, a decree may be given declaring the tenure liable to enhancement. *Hari Har Mookerjee, Appellant, 1st June*, 1863.

In a suit for enhanced rent under clause 3, Section 17, Act X. of 1859, the burden of proving that the tenant holds more land than he pays rent for, is upon the landlord; nor should the Court measure. The plaintiff has legal means of ascertaining the point, and the Court is not bound to find it out for him. *No.* 891 *of* 1864, *Hara Mohan Mookerjee, Appellant, 14th September*, 1864.

A landlord is entitled to assessment in respect of trees as being the produce of the soil, but not in respect of profits realized from the use of stalls or huts erected by the tenant for the accommodation and convenience of people frequenting a Fair annually held on the land. *No.* 937 *of* 1864, *Kewajah Chyman Khaja, Appellant, 27th August*, 1864.—See Burden of Proof.

EVICTION —See Cabooliyat—Notice—Occupancy.

————If unlawful, though it might put an end to a ryot's possession, would not destroy his holding, which would continue during the period of illegal oustment. *No* 202 *of* 1862, *Summary Appeals, Luteefun-nissa Beebee, Petitioner; 26th March*, 1863.

EVIDENCE.

Time to produce further.—See Time.

Sufficiency and credibility of—not a ground of special appeal. *No.* 2885 *of* 1862, *Baboo Brojobehary Lall, Appellant, 5th January* 1864. Nor is the refusal of additional—by a Lower Appellate Court. *No.* 2141 *of* 1861, *Mr. J. Beckwith, Appellant, 13th February*, 1863. But the higher Appellate Court

will interfere on special appeal, when the Lower Court finds on what is no evidence, or on what is not legal evidence *No.* 1916 *of* 1861, *Ram Soonder Sirkar, Gomashtah, Appellant, 3rd March*, 1863.

EXCESSIVE DEMAND.—See Notice.

F

FARMER.

Section 13, Act X of 1859, does not apply to farmers. *No.* 3089 *of* 1863, *Natho Ram Sahoo, Appellant, 28th June*, 1864. —See Forfeiture.

FERRY.

A suit for recovery of the rent of a private——is not cognizable under Act X. *No.* 2868 *of* 1862, *Mr. James Forlong, Appellant, 15th May*, 1863.

FISHERY.

The lease of a——conveys no interest in the soil under the water, and if the water dry up, the lessor may take possession of the dry bed. *Soroop Chunder Mozumdar, Appellant, 9th March*, 1863.

FORFEITURE OF FARMER'S LEASE.

Cases of forfeiture not favoured where no injury has resulted, and where a money compensation is a sufficient remedy. Mere unpunctuality in the date of payment of rent, not a sufficient ground for—; and other important principles. *No.* 402 *of* 1863, *Alum Chunder Shaw Chowdry and others, Appellants, 22nd March*, 1864.

G.

GHATS.—See Golahs.

GHUTWAL.

A Putnee Talookdar cannot sue under Act X. to eject a— In such a case, the question is the title to the lands, which cannot be decided in a Revenue Court. *Nos.* 451 and 459 *of* 1861, *Government, Appellant, 16th December*, 1863.

GOLAHS.

The right to erect—at certain Ghâts, and to collect duties from persons using the Ghâts and Golahs cannot be the subject of a suit under Act X. *No.* 469 *of* 1861, *Mr. J. Forlong, Appellant,* 17*th November*, 1862. But if *the land* be leased for the erection of the Golahs, although the lease includes the right to levy Golah duties, the suit will lie in the Collector's Court. For whatever purposes the surface of the land may be used, if the subject of the lease is land, and the rent issues out of the land, and is due on account of land, and for the use of the land, the suit will be brought in the Collector's Court. *No.* 464 *of* 1863, *Messrs. Robert Watson & Co., Appellants,* 6*th April*, 1864.

GOMASTAHS can institute suits in behalf of their Zemindars. *No.* 237 *of* 1863, *Ramanath Roy Chowdry, Appellant,* 4*th August*, 1863. *Nos.* 713 *to* 716 *of* 1862, *Meca Jan, Gomashtah, Appellant,* 26*th March*, 1863.—See Distraint.

A person who, on attaining his majority, ratified a pottah granted by his guardian's gomashtah, cannot afterwards question that pottah. Neither can any one who derives his rights from this person. *No.* 1576 *of* 1863, *Chunder Kanth Mookerjee, Appellant,* 31*st March*, 1864.

GUARDIAN.

A father cannot as—of the property of his two infant daughters, sue for arrears of rent due to their estate, without obtaining a certificate under Act XL. of 1858. *Rakhal Dass Mookerjee, Appellant,* 9*th September*, 1863.

II.

HAT.

A suit for arrears of rent due on account of a——is cognizable in the Revenue Courts, *the rent issuing out of the land* used for a certain purpose which increases its value. *No.* 2969 *of* 1863, *Gyatree Dabea, Appellant,* 7*th June*, 1864.

HEIRS.

If the——of a lessee interfere, after his death, with the property leased, and act in a manner inconsistent with their having no interest in it, they will be liable for the rent. *No.* 640 *of* 1863, *Khwaja Abdol Hossein Khan and others, Petitioners,* 22*nd August,* 1864.

HOUSE.

The purchaser of a——sold under Section 110, Act X. of 1859, should be put in possession and not referred to a regular suit to obtain possession. *No.* 438 *of* 1863, *R. Solano, Appellant,* 19*th April,* 1864.

I.

INDIGO FACTORY.

Rent of—how recoverable.—See Arrears.

INTEREST.

On payments of rent made before institution of suit, but subsequent to due dates of payment recoverable when there is a stipulation for payment of interest. *No.* 20 *of* 1862, *Ruttycant Bose, Appellant,* 30*th July,* 1862. But as to the point how far the receipt of rent for years, without a claim being made to this interest, will act as a waiver, see *Nos.* 278, 279, and 280 *of* 1862, *Dindoyal Poramanik, Appellant,* 30*th March,* 1863. See also *No.* 402 *of* 1863, *Alum Chunder Shaw Chowdry and others, Appellants,* 22*nd March,* 1864, in which the idea is favoured that such interest could be sued for without the above stipulation.

A special appeal will not lie on the ground that the Lower Appellate Court has not rightly exercised its discretion in disallowing it. *No.* 2141 *of* 1861, *Mr. J. Beckwith, Appellant,* 13*th February,* 1863.

The word *liable* in Section 20, Act X. of 1859, leaves it discretionary to the Court to award interest on balances of rent,

or not. *No.* 705 *of* 1863, *Maharanee Inderjit Kooer, Petitioner*, 22*nd August*, 1864. *No.* 584 *of* 1864, *Kasee Nath Roy Chowdry, Appellant*, 21*st September*, 1864.

Section 20 of Act X. of 1859, authorizes the Court to award interest by way of damages where the written *contract has not otherwise provided* When the parties have expressly contracted by writing, they must be bound by their contract. Where there is no written contract, the Court may give interest, as damages, to the extent of 12 per cent. *No.* 171 *of* 1864, *Nava Kanth Dé, Appellant*, 9*th September*, 1864.

INTERVENER.

An—holding a final decree of the Civil Court, would be entitled to succeed, although plaintiff had been in enjoyment of the rents up to the time of suit. But the decree must be clear as to the lands being included in it. The purport of Section 77 is, that the Revenue Courts should not anticipate the judgment of the Civil Courts. *No.* 211 *of* 1863, *Syed Ahmed Reza, Appellant*, 5*th August*, 1863. See also *No.* 128 *of* 1861, *Anund Mohun Ghose and others, Appellants*, 27*th March*, 1862.

————Cannot be heard in a suit by a tenant to recover possession under Clause 6, Section 23 of Act X. *No.* 385 *of* 1863, *Adda Persad Chuckerbutthee, Intervenor, Appellant*, 11*th August*, 1863. See also *Karuna Kanth Chowdry, Appellant*, 15*th July*, 1863.

A tenant of the plaintiff's, alleging that defendant is his under-tenant, can intervene, and if this allegation be proved, the case must be dismissed. *No.* 2172 *of* 1861, *Gungadhur Ghose, Gomashtah, Appellant*, 27*th January*, 1863.

There is no necessity for investigating the claim of an—in a suit for ejectment, as, under Section 82 of Act X., a third party could not be evicted by a decree passed against the defendant. *No.* 526 *of* 1862, *Sheik Salem, Appellant*, 20*th March*, 1863.

——Not made a party to the suit in the Lower Court, cannot appeal. *No.* 2025 *of* 1862, *Mohendro Chunder Ghose, Appellant*, 28*th April*, 1863.—See Cabooliyat—Seventy-seven.

An—alleging that plaintiff has only received the rent as intervener's agent, is entitled to have this allegation inquired into. *No.* 171 *of* 1864, *Kadambari Debya, Appellant*, 4*th August*, 1864.

ISSUES.

Amendment of—See Mistake.

ISTEMRARRE.

Lands accreting to an—tenure are, under Regulation XI. of 1825, to be held at the rates and under the conditions imposed upon the tenure itself. *No.* 1323 *of* 1862, *Mahomed Wasil and others, Appellants*, 7*th April*, 1863.

——A tenant is not bound to execute a Cabooliyat for land held under an——pottah.—See Cabooliyat.

J.

JOINT LIABILITY.

A decree against one or more persons having—may be reversed on the appeal of any one of them.—See Appellant.

JUDGE.

Judgments passed by a zillah judge, on appeal, under Section 160 of Act X. are open to special appeal. *No.* 861 *of* 1860, *Hullodhur Bishwass, Tehsildar, Appellant*, 30*th March*, 1861.

JUNGLEBOORY tenants are liable to enhancement. *No.* 234 *of* 1862, *Baboo Dhunput Singh, Appellant*, 5*th May*, 1864.

JURISDICTION.

A plea of want of—though not raised in the Lower Courts, would be received in special appeal, as acts done without jurisdiction have no legal effect whatever. *No.* 98 *of* 1862, *Gooroo Persâd Roy and others, Appellants*, 5*th August*, 1862.

——Of a Collector is not affected by the nature of a defence set up, which, if true, would make the case cognizable in the Civil Courts alone. He should decide on the truth of this

defence; should determine whether the relation of landlord and tenant exists or not. The finding on this preliminary point will determine the fact of jurisdiction or non-jurisdiction. *No.* 113 *of* 1862, *Hurree Persad Malee, Appellant*, 19*th August*, 1862. *No.* 219 *of* 1862, *Doyal Chunder Ghose and others, Appellants*, 16*th September*, 1862.

High Court will interfere on special appeal in points involving jurisdiction, as where the Lower Court had decreed arrears of rent barred by the law of Limitation; and this even, though these points have not been mooted on the special appeal. *No.* 2037 *of* 1863, *Mahomed Dad Khan, Appellant*, 11*th July* 1864.

A Revenue Court is not to oust itself of its jurisdiction, until it shall have satisfied itself, by investigation, that there is ground for supposing the allegation, which bars the jurisdiction of the Revenue Courts, to have some foundation in fact: as for example when a plea of rent-free title is set up as a bar to jurisdiction, it should enquire if this allegation is *primâ facie* a true one. *No.* 558 *of* 1864, *Baboo Kali Singh, Appellant*, 19*th September*, 1864.—See Appellate.

L.

LAKHIRAJ.

If the lakhiraj existed before 1790, a zemindar seeking to resume, must bring his suit within 12 years of his acquisition of the zemindaree; but if there is no proof that the lakhiraj was created prior to 1790, no limitation will apply. *No.* 466 *of* 1863, *Krithee Narain Chowdry, Appellant*, 14*th August*, 1863. This is a ruling of the Civil Court: same principle applicable when limitation is pleaded in defence. *No.* 2158 *of* 1861, *Kenaram Malik and others, Appellants*, 23*rd August*, 1863.

A zemindar having obtained a decree to resume—land, can, after issue of notice of the rates claimed, institute a suit for a Cabooliyat under Section 31; but arrears

cannot be decreed him. *No.* 969 *of* 1861, *Joykissen Mookerjee, Appellant, 13th July,* 1861.

A suit to resume lakhiraj land under Section 28 of Act X. will not lie, unless upon the ground that the tenure is invalid, by reason of being created after 1st December, 1790; and the burden of proof is on the plaintiff. *No.* 1914 *of* 1861, *Maharanee Inderjeet Koonwur, Appellant, 19th February,* 1863. See also *No.* 2068 *of* 1861, *Ramneedhy Boydo, Appellant, 18th March,* 1863.

The decision of a Collector, under Section 28 of Act X., can be questioned in a regular suit for resumption under Section 30, Regulation II. of 1819.—*No.* 452 *of* 1863, *Babao Madhub Chunder and others, Appellants, 14th March,* 1864. But in *No.* 1682 *of* 1863, *Kishun Chunder Bishwas, Appellant 2nd May,* 1864, it was ruled that when the title to hold lakhiraj is alleged to have arisen subsequent to 1st December, 1790, proceedings by a proprietor wishing to have the lands assessed, or the grantee dispossessed, *must* be taken under Section 28 of Act X., meaning thereby that such a suit could not be brought in the Civil Courts.

The Revenue Courts have exclusive jurisdiction, under Section 28 of Act X., in cases of rent-free tenures created subsequent to 1790. *No.* 70 *of* 1864, *Protab Chandra Paul and others, Appellants, 5th August,* 1864. See also *No.* 1932 *of* 1863, *Sheikh Meiyajan and others, Appellants, 9th August,* 1864. Should, however, a plaintiff fail to establish his right to the land as part of his permanently settled estate (which is the only ground of action under Section 28), and his suit be dismissed on this account, he is not debarred from suing in the Civil Court under Section 30, Reg. II. of 1819, to try the validity of the Lakhirajdar's title; but, in doing so, he exposes himself to be met and stopped by the plea of Limitation. *No.* 3303 *of* 1864, *Ram Churn Dutt and others, Appellants, 30th June,* 1864.

In a case under Section 28, it is for the plaintiff to prove that rent has been paid some time since the decennial settlement. *No.* 3264 *of* 1863, *Dwarkanath Shamant and others, Appellants,* 30*th June,* 1864. *No.* 546 *of* 1863, *Roy Kishen Mookerjee, Appellant,* 15*th July,* 1864.

If an auction purchaser allow 12 years to elapse, and thus become barred by limitation from suing, the right to sue will not survive to his heir. *No.* 3154 *of* 1863, *Nahi Baksh, Appellant,* 27*th July,* 1864.

Where the land has been for a long time held rent-free, a suit for rent or for a Cabooliyat will not lie, until the *primâ facie* rent-free tenure has been set aside by a competent Court. *No.* 215 *of* 1864, *Mahammed Miyanabul Hek, Appellant,* 12*th August,* 1864. *No.* 653 *of* 1864, *Devi Dutt Chowdry and others, Appellants,* 17*th August,* 1864.—See Rent—Burden of Proof.

LEASE.

If a—provides that, in case of default of payment of rent, the lessor is to have the power of re-entry, but does not mention the mode of effecting it, the lessor is bound to exercise this power under Section 22. There is, however, nothing to prevent a contract in express terms, that the power of re-entry may be exercised without applying to any Court.—*No.* 189 *of* 1862, *Mr. R. Solano, Appellant,* 23*rd December,* 1862.

Under Clause 5, Section 23 of Act X., a suit for ejectment will not lie, on the ground that *some* breach of stipulation has taken place. There must be a stipulation that the tenant will be liable to ejectment for such breach; otherwise ejectment cannot be sued for, though damages might be sought in a Civil Court. *No.* 506 *of* 1862, *Gooroo Persad Sirkar, Appellant,* 19*th March,* 1863.—See Forfeiture.

A tenant who holds on after the expiry of a lease without any fresh agreement, is bound by the terms of the lease. *No.* 2052 *of* 1862, *Sheikh Evayetoolah and others, Appellants,* 5*th April,* 1864.—See Pottah.

LIMITATION in suits for rent due at the time of the "passing of" Act X., to be reckoned from 29th April, 1859. *No.* 151 *of* 1863, *Baboo Luchmeeput Singh, Appellant, 25th August,* 1863.—*No.* 452 *of* 1863, *Mr. Moran, Appellant, 15th January,* 1864.

———Cannot be pleaded for the first time orally in special appeal. *No.* 32 *of* 1863, *Collector of Rajshahye and another, Appellants, 26th January,* 1864. But where a claim is clearly barred by the law of limitation, though it has been decreed by the Lower Courts, the High Court will interfere on special appeal, as the point is one of jurisdiction. *No.* 2037 *of* 1863, *Mahomed Dad Khan, Appellant, 11th July,* 1864.—See Lakhiraj.

A plaintiff in an Act X. case for possession, pleaded that she was entitled to the benefit of Section 14, Act XIV. of 1859, inasmuch as she alleged that she had prosecuted her claim in good faith, though in the wrong Court. It was ruled that the provisions of that Section are not applicable to suits of the above description, which are expressly exempted from the operation of Act XIV. of 1859, by Section 3 of that Act. *No.* 121 *of* 1864, *Sodaminee Dasee, Appellant, 19th July,* 1864. *No.* 2040 *of* 1863, *Roy Kali Prosonno Sein, Appellant, 17th February,* 1864. And as to there being a special limitation under Act X. of 1859, which is irrespective of that under Act XIV., see *No.* 2663 *of* 1863, *Rane Suvarnamayi. Appellant, 30th July,* 1864. *No.* 2273 *of* 1863, *Poorneema Chowdhrain, Appellant 21st July,* 1864. *No.* 2349 *of* 1863, *Juggurnath Roy Chowdhry and others, Appellants, 21st July,* 1864. And as to arrears of rent, *No.* 1414 *of* 1864, *Dukhina Devya and others, Appellants, 20th September,* 1864. See also *No.* 1227 *of* 1864, *Natho Nashya, Appellant, 17th September,* 1864.

A defendant pleading limitation, must prove the facts upon which he bases this special plea. *No.* 1537 *of* 1864, *Sristidhar Majumdar, Appellant, 24th September,* 1864

A tenant who, according to his own admission, does not make out his title to be one of an adverse character to his landlord, cannot plead limitation as a bar to a suit for possession, cannot plead limitation against his landlord's title. *No.* 1536 *of* 1864, *Sristidhar Majumdar Chowdhry, Appellant,* 21*th September*, 1864.

MEASUREMENT.

A lessee under the Court of Wards is entitled, under Section 9, Act VI. of 1862, to make a general survey of the lands comprised in his lease, as being the person having the right to receive the rent. *No.* 2533 *of* 1863, *Messrs. R. Watson and Co., Appellants*, 7*th July*, 1864.

The Pergunnah standard of———is a point that should not be disposed of in a summary way, but should be authoritatively ascertained. *No.* 343 *of* 1864, *Hori Mohan Mookerjee, Appellant,* 10*th August*, 1864. *No.* 924 *of* 1864, *Romesh Charan Dutt, Appellant,* 19*th August*, 1864.

The owner of a fractional share of an estate has full power to measure the same with a view of estimating his legitimate assets from the property, and of taking steps to realize the same. *No.* 269 *of* 1864, *Shumbu Chandra Sadhi Khan, Appellant,* 30*th August*, 1864.

M.

MESNE PROFITS.

A suit to recover possession of land, if——be also claimed, may be brought in the Civil Courts, notwithstanding Section 23 of Act X. *No.* 787 *of* 1863, *Ram Lochun Dass, Appellant,* 8*th January*, 1864.

———Cannot be recovered under Clause 6, Section 23, of Act X. A party must sue therefore in the Civil Courts. *No.* 1768 *of* 1861, *Futtunmonee Dassee, Appellant,* 13*th February*, 1863.

MIDDLEMEN, *i. e.*, persons who hold intermediate rights between landlord and the actual cultivators, cannot acquire rights of occupancy under Section 6 of Act X. *No.* 577 *of* 1862,

Bheirub Nauth Sandyal, Appellant, 24th December, 1853. See also *No.* 448 *of* 1862, *Bindabun Chunder Chowdry, Appellant, 4th January*, 1864, where defendants, middlemen, had held for 40 years.

MISJOINDER.

A plaintiff cannot lump in one suit, under Act X., several and distinct claims. *No.* 411 *of* 1861, *Sheik Moorad Alee and others, Appellants, 21st February*, 1863.

MISTAKE.

If there is a variance between a plaintiff's statements and proofs, arising from inadvertence or mistake, the Court may allow the issues to be amended, but this is entirely at the discretion of the Court. *No.* 176 *of* 1862, *Nurro Hurry Mohonto, Appellant, 12th August*, 1862.

MOCURRERRE tenure not created 12 years before the date of the permanent settlement is liable to be voided by an auction purchaser under Act I. of 1846. Section 37, Act XI. of 1859 does not apply to sales made before it was passed. *No.* 425 *of* 1860, *Luteefun-nissa Beeboe, Appellant, 22nd August*, 1862.

If a ———— pottah be for a specified area without mention of boundaries, the landlord may assess at fair and equitable rates any land held by the tenant in excess of that area. *No.* 1508 *of* 1863, *Bipro Dass Dey and another, Appellants, 31st March*, 1864.

MORTGAGE.

As a general rule, a mortgagor and mortgagee do not stand in the relation of landlord and tenant, but their position depends altogether upon the terms of their contract. If the mortgagee executes a lease in favour of the mortgagor, stipulating to pay him a certain amount annually as rent, he is, as far as the payment of this sum is concerned, a tenant of the mortgagor, and any arrears of such rent must be sued for under Act X. of 1859. The lease in question was of the description called *Zurpeshgee*. *No.* 2780 *of* 1863, *Bishoor Rup Dutt, Appellant, 30th June*, 1864.

MUKHTAR.

The presentation by the defendant of a petition for an adjournment by a—is no *appearance* such as will bar an *ex-parte* judgment. *Roop Narain Singh, Appellant, 24th June*, 1863.

N

NAEB.—See Distraint.

NOTICE OF ENHANCEMENT, under Section 13 of Act X., must state the rent claimed for the ensuing year, and the grounds of enhancement; but the exact area need not be specified.—*No.* 610 *of* 1863, *Baboo Khetternath Dass, Appellant, 5th August*, 1863. See also *No.* 39 *of* 1863, *Bhowaninath Chuckerbutty and another, Appellants, 7th January*, 1864.

————Must be served within time. A notice served on 1st Beisakh was disallowed. *No.* 628 *of* 1862, *Mahtab Deo and others, Appellants, 18th September*, 1863.

————Not required in a suit for a Cabooliyat at enhanced rates. *Nos.* 2960 & 2961 *of* 1862, *Jan Ally, Appellant, 5th January*, 1864.

In a suit by a ryot for the reversal of a notice of enhancement, and for obtaining an istemraree pottah, it was held that the Lower Appellate Court was right in not going into the grounds of enhancement, or the fairness of the rate. These points should be left to be decided in a suit for excessive demand, or in a suit for arrears. *No.* 240 *of* 1862, *Gunga Persad Sing, Appellant, 11th November*, 1862.

A tenant, *not having a right of occupancy*, cannot ask the Court, under Act X., to fix a rate of rent between him and the landlord, in reversal of a notice of enhancement. He might, however, have brought a suit for excessive demand, or, in a suit for arrears, have maintained that the amount demanded was larger than he ought to pay. *No.* 409 *of* 1862, *Sheik Moheem, Appellant, 12th March*, 1863.

Objection to non-service of——cannot be taken for the first time in special appeal. *No.* 1655 *of* 1863, *Ramzan and another, Appellants, 17th February*, 1864.

A plaintiff must be kept to the grounds of enhancement stated in the notice, and cannot proceed on other grounds. *Hurree Mohun Acharjee and others, Appellants, 17th February,* 1864.

A notice is regular if it has been obviously issued on the part of the landlord, though it may not bear his signature, or the signatures of his agents; and it has been duly served if posted on an Indigo Factory situate on the lands, which is a conspicuous place within the meaning of the Act. One notice so served is sufficient, though the lands be scattered over several mouzahs. *No.* 433 *of* 1863, *Horronath Roy and others, Appellants, 27th April,* 1864.

A notice of enhancement must be reasonably accurate and precise. A notice to pay a lump sum on the whole land in and out of defendant's possession is not sufficient. *No.* 2472 *of* 1863, *Tarachand Roy, Appellant, 21st July,* 1864.

A plaintiff cannot be prejudiced by suing in his plaint for less rent than that mentioned in the notice. *No.* 1308 *of* 1863, *Mr. James Hills, Junior, Appellant, 1st August,* 1864.

A Naeb may sign a notice of enhancement without any special authority. *Digambhar Mittra, Appellant, 13th March,* 1863.

One notice of enhancement was held sufficient in regard to seventy-five separate holdings situate in nineteen distinct villages, although each holding had been originally measured, assessed, and recorded separately in the Government Rent Roll, because the ryots and their landlord had been in the habit of treating them as one consolidated holding. *Jadav Chunder Haldar, Appellant, 14th May,* 1863.

O

OCCUPANCY.

Right to claim abatement of rent not confined to ryots having rights of——. *No.* 482 *of* 1863, *Ram Chunder Bose, Appellant, 17th August,* 1863.

Rights of——cannot be acquired by middlemen.—See Middlemen. See also Pottah—Notice.

————As a trespasser will not count towards the 12 years necessary to create a right of occupancy. *No.* 127 *of* 1862, *Sheikh Peer Bux, Appellant, 8th March*, 1864.

In the case of ryots *not having a right of occupancy*, the landlord may eject, if he will, should he and the ryot not be able to agree as to the rate of rent; but if he elects to sue for rent at an enhanced rate, he cannot recover more than is fair and equitable. *No.* 1953 *of* 1862, *Kalee Sheikh, Appellant, 24th September*, 1862.

A right of occupancy is transferable, but the landlord is not bound, under Section 27, to register the transfer. *No.* 753 *of* 1864, *Mussamat Taramoni Dasi, Appellant, 8th September*, 1864. See also *No.* 1022 *of* 1864, *Jagat Chunder Roy, Appellant, 15th September*, 1864.—See the text of the Work.

ONUS PROBANDI.—See Burden of Proof.

OOTBANDEE ryot served with notice that, unless he pay enhanced rent for the ensuing year, he must quit the land, intimated to the landlord's agent his intention to quit. This was held to be a sufficient notice of relinquishment. *No.* 331 *of* 1863, *Mr. T. J. Kenny, Appellant, 2nd February*, 1864.

P

PAYMENTS of rent cannot be credited to arrears of previous year, unless made on that understanding. Payments in each year must be presumed to be for the *current year*, unless the contrary be shewn; surplus payments of any year should be credited to past, not to subsequent years. *No.* 1832 *of* 1863, *Taramonee Dasee and others, Appellants, 17th February*, 1864.

According to the general rule of law, if a general payment be made in any year without specification of what year's rent is thereby to be liquidated, and if there be an arrear of the previous year, the payee is at liberty to apply such part

of the money as is necessary to satisfy the arrears of the preceding year. *No.* 410 of 1863, *Mr. Robert Ahmuty, Appellant*, 22*nd February*, 1864. See also *No.* 2663 *of* 1863, *Ranee Suvarnamayi, Appellant*, 30*th July*, 1864.—See Place.

PERMANENT SETTLEMENT.

Date of——must be taken to be 22nd March, 1793. *No.* 234 *of* 1862, *Baboo Dhunput Singh, Appellant*, 5*th May*, 1864. —See Presumption—and Twenty Years.

PLACE.

Agreement to pay rent at a particular ——,presumed to be waived by conduct of plaintiff in receiving payment in another place. *No.* 2125, *Rakhal Dass Mookerjee, Appellant*, 29*th April*, 1863.

POSSESSION.

In a suit to recover———on the ground of being illegally evicted, the plaintiff must shew that he has some right to be reinstated, some *right to possession*. *No.* 436 *of* 1862, *Madhur Khan, Appellant*, 27*th March*, 1863.

A party evicted by another, from whom the land is not held by the former, as a tenant or farmer, cannot sue for—under Act X., but must go to the Civil Court. *No.* 721 *of* 1862, *Robert Watson & Co., Appellants*, 13*th* March, 1863. And again, the dispossessors not being zemindars or superior holders, there is no jurisdiction under Act X. *No.* 1586 *of* 1863, *Kooroonamee Dasee, Appellant*, 17*th February*, 1864. A suit for possession of a jote by a person alleging himself to be the heir of the ryot evicted by the zemindar, who denies the title of heir, is not cognizable under Clause 6, Section 23 of Act X., as the Collector cannot try a question of heirship. *No.* 1478 *of* 1862, *Hurry Churn Luskar, Appellant*, 14*th April*, 1863.

A suit for—will lie by a farmer when the cultivators on the farm have been disturbed or dispossessed, for this is, in effect, ejecting and disturbing in the receipt of the rents the farmer

to whom they pay their rents. *No.* 1973 *of* 1863, *Sungut Mohto, Appellant*, 23*rd April*, 1864.

A ryot ousted by order of a Magistrate under Section 318, Act XXV. of 1861, is not bound in a suit for possession to notice that order, or sue for its reversal; nor will any period of limitation commence to run against him from the date of that order. *No.* 2376 *of* 1863, *Sreemuttee Luksee Dabea Chowdrain, Appellant*, 25*th April*, 1864.

A suit will lie under clause 6, Section 23, by a tenant to settle the question of right to possession, and obtain a confirmation of possession when such right is denied by the landlord. *No.* 2916 *of* 1863, *Gooroo Churn Koomar, Appellant*, 7*th June*, 1864.

A suit for possession will lie against the Zemindar by the purchaser of a ryot's jote, if the Zemindar refuse to permit the entry of the purchaser, when by local custom the jote is saleable. *No.* 1830 *of* 1863, *Degumburree Debea and another, Appellants*, 10*th June*, 1864.

In a suit for possession, the plaintiff must establish that he was *illegally* ejected from his tenure. If he was a tenant not having a right of occupancy, and the term had expired, the landlord has a right to the property, provided he used no improper means to obtain it. The mere fact that the plaintiff no longer possesses what he once possessed, is insufficient to shew that he has been *illegally* ejected. *No.* 2199 *of* 1863, *Sheo Rutthun Singh and others, Appellants*, 11*th May*, 1864. *No.* 1643 *of* 1864, *Raghi Nandan Singh, Appellant*, 27*th September*, 1864.

In a suit for possession by a ryot whose (former) tenancy is not disputed by the landlord, the proper issue is, whether the ryot was illegally ejected or not, and not whether he had a right of occupancy or not. *No.* 2879 *of* 1863, *Mussamut Taj Beebee, Appellant*, 23*rd June*, 1864. But where the defendant does not plead a right to dispossess, but denies plaintiff's possession,

the sole issue is, whether or not plaintiff had been in possession and had been dispossessed. *No.* 2097 *of* 1863, *Chunder Shukr Deb Roykut, Appellant*, 8*th July*, 1864.

A is ousted by B, who alleges that he has got a lease from C, A's Zemindar. Notwithstanding such allegation, or even the Zemindar's subsequent notification of it, the Civil Court has jurisdiction. *No.* 2921 *of* 1863, *Makbul Hossein and others, Appellants*, 27*th June*, 1864. *No.* 2846 *of* 1863, *Joykissen Mookerjee, Appellant*, 27*th June*, 1864.

The purchaser of an under-tenure sold in execution of a decree, cannot obtain possession under clause 6, Section 23, Act X. of 1859, seeing that he has not been ejected. *No.* 320 *of* 1864, *Jagabandhu Malik, Appellant*, 15*th August*, 1864.

The Civil Courts have no jurisdiction in a case of ejectment or dispossession of a tenant by his landlord. *No.* 212 *of* 1864, *Bálú Madhav Ray, Appellant*, 12*th August*, 1864.—See Intervener.

POTTAH.

A ryot is not entitled to demand a———for land an accretion to his jote from a party to whom the rent thereof is not payable. *No.* 97 *of* 1862, *Kishun Dhun Sudhikaree, Appellant*, 12*th August*, 1862.

The objection that the grantor of a———was not competent to grant it, cannot be taken for the first time in special appeal. *No.* 2039 *of* 1863, *Ram Narain Nundy, Appellant*, 17*th February*, 1864.

The fact of there being an arrear of rent due is no answer to a suit for a———. *No.* 1947 *of* 1861, *Sreeram Roy and others, Appellants*, 22*nd January*, 1863.

If a plaintiff, in a case laid under Section 3 of Act X., to obtain a pottah at fixed rates, fail to prove his case, he is not entitled to a decree for a———at fair and equitable rates. *Nos.* 510 *and* 511 *of* 1862, *Doorga Mahtoon, Appellant*, 20*th March*, 1863.

A ryot not having a right of occupancy, is not entitled to a——, unless he can agree with his landlord as to the rates of rent. *No.* 2207 *of* 1861, *Lalla Sheeb Lol and others, Appellants, 3rd March,* 1863.

A pottah which does not specify any term, is not a permanent lease, and so a bar to enhancement. *No.* 2064 *of* 1863, *Mathora Mohan Sáhá, Appellant, 27th July,* 1864.

Suits for pottahs by parties possessing a proprietory and transferable title, such as a putneedar possesses, are not cognizable under Act X. *No.* 2231 *of* 1862, *Alimoodeen, Appellant, 4th May,* 1863.

Proof that the plaintiff ryot holds the land, is necessary to entitle him to a pottah. *No.* 2438 *of* 1863, *Nudhee Dass and others, Appellants, 31st May,* 1864.

A pottah at fixed rates, granted to an individual, containing no provision for making the privilege hereditary, cannot be held to extend to sons and grandsons the indulgence originally granted as a personal favour to the ancestor. *No.* 3125 *of* 1863, *Ramnarain Singh and Gunganarain Singh, Appellants, 21th June,* 1864.

When a pottah leases a certain area within certain defined boundaries at a fixed rent, the tenure is protected from enhancement, on the ground of the quantity of land being more than that for which rent has been previously paid by the tenant. *No.* 2039 *of* 1863, *Ramnarain Nundy, Appellant, 17th February,* 1864. But if the pottah be for a specified area, without mention of boundaries, the landlord may assess at fair and equitable rates any land held by the tenant in excess of that area. *No* 1508 *of* 1863, *Bippro Dass Deo and another, Appellants, 31st March,* 1864.

A lease being granted for 15 beegahs of land within specified boundaries with a condition for reduction of rent, if that should prove to be less than 15 beegahs, it was held that the landlord had no right to assess lands within the boundaries

in excess of 15 beegahs. *No.* 3066 *of* 1863, *Mr. B. C. Limond, Appellant*, 30*th June*, 1864.

PRESUMPTION OF LAW IN SECTION 4, AS TO THE TWENTY YEARS' POSSESSION.

A defendant is entitled to the benefit of——if he *plead* that his rent has not been changed since the time of the permanent settlement, and *prove* that it has been uniform for the last 20 years. *No.* 446 *of* 1863, *Chunder Koomar Roy and others, Appellants*, 17*th August*, 1863; and is not entitled, if he do not plead as above. *No.* 411 *of* 1863, *Beazan Nissa, Appellant*, 30*th November*, 1863.

A plea that defendant has held at a uniform rent on a pottah granted 57 years ago, but subsequent to the permanent settlement, annuls this presumption of law. *No.* 92 *of* 1862, *Rajah Mun Mohun Singh, Appellant*, 12*th August*, 1862.

This presumption once established by the ryot, must be rebutted by shewing that the rent has been varied, or fixed at a period subsequent to the permanent settlement. The *onus* of proving a fixed rent from the time of the permanent settlement cannot be thrown on the ryot. *No.* 855 *of* 1863, *Dhun Singh and another, Appellants*, 2*nd March*, 1864.

This presumption is also destroyed by a change in the rent of an undivided fractional part of the tenure. Rent must be regarded as an entire thing, and a change in the part affects the whole. *No.* 1304 *of* 1862, *Mahomed Muddeen Mirdha and others, Appellants*, 7*th April*, 1862.

A decree for the arrears of a particular year creates a presumption (though a rebuttable one) of payment of the rent of previous years. *No.* 1336 *of* 1860, *Seeb Narain Butturcharjya, Appellant*, 5*th September*, 1861. *Kishen Sivan Bukshee, Appellant*, 21*st May*, 1862.—See Twenty Years.

PREVAILING RATES.—See Rates.

PREVIOUS YEARS' RENT.

Payment of——when presumable.—See Presumption.

PRINCIPAL.—See Agent.

PROCEDURE of Act VIII. of 1859 how far applicable to suits under Act X. of 1859. *No.* 219 *of* 1862, *Doyal, Chunder Ghose and others, Appellants,* 16*th September*, 1862.

PURCHASER.

An auction——at a sale for arrears of revenue prior to Act X., cannot enhance the rent of land held at a fixed rate from the time of the permanent settlement, though the pottah be neither istemrarce or mocurreree. *No.* 2211 *of* 1862, *Ram Nauth Lol Bhukut, Appellant,* 7*th August*, 1863.

A pottah, not being for one of the protected classes of tenures, is not good against an auction——*No.* 1318 *of* 1863, *Radha Kant Dutt and Lukee Kant Dutt, Appellants,* 21*st January*, 1864.—See Auction—House—Mocurreree—Rent.

A purchaser of a Government estate, who undertakes to respect the *jummabundee* made by the Revenue Authorities, is precluded from enhancing the rents of the tenants, upon the first ground of enhancement mentioned in Section 17 of Act X., but must proceed upon one of the other grounds. *No.* 2549 *of* 1863, *Sukhi Mani Haldar, Appellant,* 25*th July*, 1864.

The purchaser of an estate settled in perpetuity, can enhance the rents, but is bound to show that since the period of the settlement circumstances have occurred which have tended to raise the value of the ryots' lands, and consequently to entitle him to an increased share of the surplus profits accruing from the lands. *No.* 2372 *of* 1863, *Ram Lochun Paul, Appellant,* 21*st July*, 1864.

PUTNEE TALOOK.

Purchaser of——not entitled to enhance rent of ryots, who would have been protected from enhancement against the former proprietor. The power to void incumbrances, under Section 2, Regulation VIII. of 1819, does not apply to leases granted to under-tenants. *No.* 545 *of* 1863, *Issen Chunder Kur and others, Appellants,* 18*th August*, 1863.

A suit by one putneedar against his co-putneedars for his share of the rents collected by them, cannot be entertained under Act X., but must be brought in the Civil Court. *No.* 1417 *of* 1863, *Noobbul Singh and others, Appellants, 17th February,* 1864.

A purchased one of several estates sold in execution of a decree; all these estates had been let in one putnee, at a gross rent for all, by B, the late proprietor, to C. A sued C for a Cabooliyat for his purchased share, at a rent bearing the same proportion to the whole putnee rent, as the sudder jumma of his share bore to that of all the lands let in putnee. Held that no redress could be had in such a matter under Act X. The owners of the other shares should be made co-defendants, and the case should be brought in the Civil Courts. *No.* 1562 *of* 1863, *Poresh Nauth Roy, Appellant, 24th February,* 1864.—See Abatement.

A Putnee sale was, after long litigation, finally set aside on account of irregularity. It was ruled that the time occupied in that proceeding could not be deducted in reckoning the period within which, under the law of limitation, an action could be brought for the original arrears. *No.* 95 *of* 1864, *Kishto Nath Ray and another, Appellants, 19th August,* 1864.

A transferee or purchaser of a zemindaree cannot, as a matter of course, sue a Putneedar for a fresh Cabooliyat. Had he lost or not obtained possession of the original Cabooliyat, he might, perhaps, *under certain circumstances,* sue for a Cabool yat in the precise terms of the former one. *No.* 1336 *of* 1864, *Mr. J. Beckwith, Appellant, 26th September,* 1864.

R.

RATES *in the places adjacent* means rates in the vicinity, not those in the particular village in which the jote is situated.—*No.* 259 *of* 1863, *Dukhina Mohun Roy Chowdry, Appellant, 5th August,* 1863.

Prevailing rates must be taken to mean rates that *do* prevail, not rates that *ought* to prevail. *No.* 593 *of* 1862, & 71 *of* 1863,

Lukhun Magilla, Appellant, 25th March, 1863.

The decree of a Court of competent jurisdiction fixing the rates of adjacent lands, is evidence, but not *conclusive* evidence. *Nos.* 1304 *to* 1307 *of* 1864, *Mr. T. J. Kenny, Appellant*, 29*th September*, 1864.—See Pottah.

RECEIPTS not duly stamped, received by a Lower Court, not ground of interference in special appeal. *No.* 260 *of* 1863, *Kyemoolah and another, Appellants, 5th August*, 1863.—See Rent.

RE-ENTRY.—See Lease.

REGISTRATION.

A Zemindar is not bound to recognise any transfer of a tenure in regard to which application has not been made to have such transfer registered in the Zemindaree Sherishteh. Mere cognizance of the transfer is not sufficient to cure the defect of non-registration, unless it could be shewn that the Zemindar not only knew of the transfer, but accepted the transferee as his tenant. The receipt of rent by the Zemindar would amount to such accepting. *No.* 3076 *of* 1863, *Mr. J. C. Sarkies, Appellant*, 1*st July*, 1864. See also as to the latter point. *No.* 2150 *of* 1863, *Noboo Koomar Ghose, Appellant*, 15*th July*, 1864.

A person not obtaining an intermediate transferable right between the zemindar and the cultivator, but stepping into the place of the cultivator himself, whose rights and interests in the land he had bought, is not compelled to notify his purchase, under Section 27, in the Zemindaree Sherishteh. *No.* 3043 *of* 1863, *Maharajah Satish Chunder Rai Bahadoor, Appellant*, 27*th June*, 1864. Nor is the landlord bound to register such a transfer. *No.* 753 *of* 1864, *Mussamut Taramani Dasi, Appellant, 8th September*, 1864.

RELINQUISHMENT.

Mere proof of notice of——without proof of actual relinquishment is not a sufficient answer to a suit for arrears of rent. *No.* 625 *of* 1864, *Nobin Chandra Ray Sarma, Appellant*, 15*th August*, 1864.

REMAND.

Not legal, when the Lower Court has examined all the evidence required to be examined and the trial has been complete. In such a case, if the Judge of the Appellate Court require additional evidence, he should take it himself. *No.* 3494 *of* 1863, *Chundra Koomar Rai, Appellant*, 30*th June*, 1864.

RENT.

The receipt of a few instalments of——by an auction purchaser before he had time to look into titles, &c., will not bind him. *No.* 1318 *of* 1863, *Radha Kant Dutt and Luckse Kant Dutt, Appellants*, 21*st January*, 1864.

Receipt of—for a subsequent year will bar the right of ejectment for a previous arrear. *No.* 39 *of* 1862, *Sheikh Peer Bux, Appellant*, 18*th July*, 1862.

Definition of—in enhancement cases. *No.* 1607 *of* 1862, *Issur Ghose, Appellant*, 24*th September*, 1862.

Receipt of a portion of—for any year would bar ejectment till the end of that year. *No.* 436 *of* 1862, *Madhur Khan, Appellant*, 27*th March*, 1863.

In a suit for——if defendant plead that the land is rent-free, the only issue is one of fact, whether or not rent has been paid before the suit. *No.* 1640 *of* 1862, *Jodhee Singh, Appellant*, 9*th March*, 1864. But if the defendant admit himself to be a ryot of the plaintiff for a portion of the land referred to in the suit, the burden of proving a plea that he is not plaintiff's ryot for the rest of the land, will fall on the defendant. *No.* 98 *of* 1862, *Gooroo Persad Roy, Appellant*, 5*th August* 1862.—See Assignment.—Payment.—Place.

RES-ADJUDICATA.—See Dismissal.

RESPONDENT may, upon the hearing of a special appeal, take any objection which he might have taken, had he preferred a separate special appeal. *No.* 1607 *of* 1862, *Isshur Ghose, Appellant*, 24*th September*, 1862.

REVERSAL by a Judge of the whole case, when plaintiff, who had obtained a partial decree, appealed, and defendants, as repondents, raised no objections under Section 348 of Act VIII. of 1859, was incorrect. *No.* 347 *of* 1862, *Hem Chunder, Appellant, 4th March*, 1864.

REVIEW.

A Judge can—his judgment in an Act X. case, as Act VIII. of 1859 has been declared to apply, as far as it is applicable, to suits under Act X.; and Section 376 of Act VIII. allows a Judge under certain conditions to review his judgment. *Sheikh Nujeeb, Appellant, 11th June*, 1862. But upon review, a plaintiff cannot be allowed to shift his ground, and set up a new case. *Nara Hari Mahant, Appellant, 12th August*, 1862.

REVIVAL.

The order of a Deputy Collector admitting a revival under Section 58, Act X. of 1859 is final under Section 13, Act VI. of 1862. The Collector cannot hear an appeal therefrom. *No.* 294 *of* 1863, *Kishtonath Bishwas, Petitioner, 22nd February*, 1864.

SALE.

No action well lie in the Civil Court to set aside a sale of a tenure sold in execution of a decree for rent accruing on that tenure, under Section 105. But the Collector's order is final. *No.* 70 *of* 1863, *Ruttun Monee Dasee, Appellant, 16th March*, 1864. And so also where the tenure was sold in execution of a decree under Section 108. *No.* 3566 *of* 1863, *Haranund Dutt and others, Appellants, 22nd July*, 1864.

But where an estate is sold in execution under Section 105 or Section 110, the sale of the tenure is the execution of the powers for enforcing the judgment, within 15 days of which, the defendant, in an *ex parte* case, may apply for a rehearing. *No.* 580 *of* 1863, *Jotendro Mohun Tagore, Appellant, 3rd May*, 1864.

SAZAWAL.

A plaintiff claiming from the defendant the difference between what the——could collect and what was really due, must show by the clearest and most reliable evidence, the extent of the collections by his own servant the Sazawal. *No.* 326 *of* 1863, *Ramaput Tewaree, Appellant*, 21*st July*, 1864.

SERVICE-TENURE.

The mere fact of long rent-free possession of a——— gives the holder no exemption from the payment of rent, when the service is no longer required, or performed. *No.* 1500 *of* 1863, *Chunder Nauth Roy Appellant*, 31st *March*, 1864.

Before the rent of a———can be enhanced, the tenure must be legally resumed. *Nil Mani Singh Deo, Appellant*, 22*nd May*, 1863.

SET-OFF.

Revenue Courts not competent to investigate pleas of—when the accounts which include the items of set-off, have not previously been admitted by the plaintiff, or when the matter of the set-off involves enquiries beyond the jurisdiction of those Courts. *No.* 10 *of* 1861, *Moulvy Abdool Ally, Appellant*, 5*th October*, 1861. In *No.* 587 *of* 1862, *Mussamut Joykooer Dobain, Appellant*, 3*rd February*, 1864, the defendant had pleaded that, by an understanding, or agreement, between him and the plaintiff, he was allowed to retain his rents in consideration of the expenditure by him on the plaintiff's account. It was held that this plea must be investigated, and the case was remanded for such investigation.

Payment by a defendant under the plaintiff's direction to another, or for a specified purpose, is tantamount to a payment to plaintiff himself, and is a sufficient answer to plaintiff's suit. This is rather a plea of *payment* than *set-off*, and is open to a defendant in a suit under Act X. *No.* 587 *of* 1863, *Joy Kooer, Appellant*, 18*th July*, 1864.

The defendant's pottah provided for excess payments and short collections, and stipulated that all expenses incurred in the prosecution or defence of criminal cases connected with the ijarah should be deducted from the rent. It was held that the Revenue Courts could not adjudicate upon a claim to a set-off under the last proviso, on account of costs incurred in a case of assault by plaintiff upon defendant. *No.* 2322 *of* 1863, *Ishwar Chundra Saha, Appellant,* 11*th July,* 1864.

A tamassook, if genuine, constitutes an answer to a claim for rent, and does not constitute merely a set-off. The Revenue Courts may try the genuineness of a tamassook, which is not an ordinary money bond, but a deed in modification of the conditions of the original lease. *No.* 668 *of* 1864, *Mussamut Edun, Appellant,* 21*st July,* 1864.

SEVENTY-SEVENTH SECTION.

Sole point for enquiry under—is, has the intervener or the plaintiff been in receipt of the rent up to time of claim. No question of title should be gone into. *No.* 473 *of* 1862, *Prollad Singh and others, Appellants,* 19*th March,* 1863. *Nos.* 193 *to* 197 *of* 1863, *Vojun Singh and others, Appellants,* 4*th August,* 1863.

An appeal from a decision under—lies to the Judge, even though the claim be under 100 rupees. *No.* 1178 *of* 1863, *Gopal Chunder Dass and another, Appellants,* 10*th September,* 1863.

A sued B for rent, alleging both his right and possession. B denied A's possession, and pleaded that he paid his rent to C, a third party, as rightful heir in possession, who appeared and supported this allegation. Case remanded for enquiry into the actual receipt and enjoyment of the rent by C. *No.* 60 *of* 1862, *Mirza Zahid Ally, Appellant,* 5*th August,* 1862.—See Intervener.

SHARE.—SHAREHOLDER.

The portion of an estate for which a separate account is opened under Sections 10 and 11 of Act XI. of 1859, and the portion from which it is separated, are equally *shares* within the

meaning of Section 10. The latter, though it may, for convenience sake, be termed the *parent estate*, cannot be considered an *entire estate* within the meaning of Section 37, but is still a share and liable to all the incidents of a share. *Nos.* 495 *and* 496 *of* 1864, *Monohur Mookerjee, Appellant*, 19*th August*, 1864.

A shareholder in a joint undivided estate is *primâ facie* liable to his co-sharers for their share of the rent of any ground which he occupies personally. *No.* 928 *of* 1864, *Gúrú Prosonno Rai and others, Appellants*, 26*th August*, 1864.

A shareholder in a joint undivided estate cannot sue for rent from ryots who have never paid rent to him, but have always paid it separately to another shareholder. *No.* 929 *of* 1864, *Joy Nath Nag, Appellant*, 26*th August*, 1864.—See Arrears—Coparcenary.

SIGNATURE of a man taken in Court may be compared with that on receipts denied by the opposite party. *No.* 260 *of* 1863, *Kyemoolah and another, Appellants*, 5*th August*, 1863.

SPECIAL APPEAL.

Generally a point not taken in the Lower Appellate Court cannot be raised in special appeal. *No.* 76 *of* 1862, *Shaik Sufee Appellant*, 30*th July*, 1862.—See Cabooliyat—Document——Evidence—Interest—Jurisdiction—Notice—Respondent—Witnesses.

STATEMENT under Act VIII. of 1859 is not in the nature of *confession and avoidance* as in English pleading, where the confession is considered as an admission of the party, and the avoidance has to be proved. The statement of a party, if it is to be used as evidence against him, must be taken altogether, and not in part. *No.* 271 *of* 1862, *Lallah Probhoo Dass and Gobind Dass, Appellants*, 14*th March*, 1864.

SURETY.

A suit against a lessee for rent, and in default against his surety, may be heard under Clause 4, Section 23 of Act X. *Kumarunnissa Begum, Appellant*, 28*th June*, 1862.

SUSPENSION OF AN AGENT.—See Agent.

T.

TALOOKDAR.

Section 15 of Act X. must be taken to modify the Sale Law. *No.* 610 *of* 1862, *Mr. A. F. Forbes, Appellant, 7th December*, 1863.

The rent of a talook may be abated on the ground of diluvion, or a deduction may be allowed on this account in a suit for arrears of rent. *Assar-ud-din, Appellant, 19th June*, 1863.—See Under-tenure.

The provisions of clause 3, Section 17, Act X. of 1859, do not apply to talookdars possessing permanent rights. *No.* 697 *of* 1863, *Chunder Kanth Mookerjee, Appellant, 14th August*, 1863.

TENURE.—See Dispossession—Sale—Service.

TIME.

Refusal of Lower Court to grant further time to produce additional evidence is no ground for interfence in special appeal. *No.* 188 *of* 1863, *Kistojeebun Buxee, Appellant, 5th August*, 1863.

TOLLS.

A suit to recover rent on a lease of—arising from a canal or river navigation, is not cognizable in the Revenue Courts under clause 4, Section 23, Act X. of 1859. *No.* 593 *of* 1864, *Mr. H. W. Garland, Executive Engineer, Appellant, 11th August*, 1864.

TRANSFERABLE.

What tenures are——in any district, and whether a tenure is ———without the consent of the landlord, can only be settled by enquiry into the local custom of each district. *No.* 412 *of* 1864, *Joy Kishen Mookerjee, Appellant, 21st September*, 1864.—See Occupancy.

TWENTY YEARS.

The——necessary to establish the presumption in Section 4 of Act X. must be next before the commencement of the suit.

No. 425 *of* 1860, *Luteefunnissa Beebee, Appellant, 22nd August*, 1862.

A fixed rent for 18 years being proved by documentary evidence and parol evidence, shewing a fixed rent for more than 20 years, the High Court would not interfere. *No.* 1690 *of* 1862, *Runjeet Singh and others, Appellants, 3rd December*, 1863.

Twenty years' presumption not allowed, where it was pleaded that defendants, ryots, had held for 50 *or* 60 *years*, and for *three generations*, such uncertain allegations not being held equivalent to a plea of holding from the time of the permanent settlement. *No.* 3123 *of* 1863, *Ramnarain Singh and Gunganarain Singh, Appellants, 24th June*, 1864.

When a presumption in defendant's favour arises under Section 4, Act X. of 1859, a plaintiff must have an opportunity given him of adducing evidence to rebut it. *No.* 38 *of* 1864, *Baboo Beni Ram, Appellant, 25th July*, 1864.—See Change—Presumption

U.

UNDER-TENANT.

An action will lie under clause 7, Section 23, Act X by an——, upon whom a distress was made for the rent of his lessor, the proceedings of the distraint not having been according to law. *No.* 235 *of* 1862, *Nundaug and others, Appellants, 29th January*, 1863.

An——acknowledged being in possession of his tenure with the exception of an intermediate period; but did not plead ouster for that period by any act of the Zemindar, in whose office he was registered as proprietor of the tenure. He was held liable to the Zemindar for the rents of the intervening period. *No.* 814 *of* 1861, *Mussamut Mohun Malah, Appellant, 27th March*, 1862.

UNDER-TENURE.

A saleable——must be held to be burdened with, and hypothecated for, the rents due on it, and the landlord's lien is good

against a private purchaser so long as any rent is in arrear. *No.* 359 *of* 1864, *Mr. T. J. Kenny, Appellant*, 30*th July*, 1864.

The purchaser of an——sold in execution of a decree, who never got possession, cannot sue for possession under clause 6, Section 23, Act X. of 1859, as he has never been illegally ejected. *No.* 320 *of* 1864, *Jagabandhu Malik, Appellant*, 15*th August*, 1864.—See Transferable.

V.

VARIANCE.—See Mistake.

VERIFICATION.

An Appellate Court cannot reject an appeal for the non-verification of a statement admitted by the first Court. Act X. is silent on the subject of the verification of written statements filed by defendants. *No.* 1090 *of* 1864, *Mr. G. Clarke, Appellant*, 17*th September*, 1864.

W.

WASILAT.—See Mesne Profits.

WITNESS.

It is the duty of a plaintiff to secure the attendance of his witnesses on the day of trial. A special appeal, on the ground that the Court decided without summoning the plaintiff's witnesses, when he had failed in the above duty, was rejected. *No.* 1845 *of* 1863, *Tiluk Chund Sahoo, Appellant*, 17*th February*, 1864.

ZUR-I-PESHGEE.

A suit to cancel a——lease will not lie in the Collectorate Courts, (such lease being of the nature of a mortgage), unless the terms of the lease distinctly provide for such a course of procedure in the event of a breach of any of its conditions. *No.* 3400 *of* 1863, *Mohammed Ali, Appellant*, 30*th August*, 1864. —See Mortgagor.